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OCT 2 1973

MICHAEL RODAK, JR., CLERK

APPENDIX

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-1125

A. Y. ALLEE, ET AL,

Appellants

v.

FRANCISCO MEDRANO, ET AL,

Appellees

**Appeal From
The United States District Court
For The Southern District Of Texas**

Filed February 14, 1973
Probable Jurisdiction Noted May 7, 1973

APPENDIX

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Appellants

v.

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Appellees

**Appeal From
The United States District Court
For The Southern District Of Texas**

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[fol.A]
67-B-36

DOCKET

67-B-36

TITLE OF CASE

FRANCISCO MEDRANO, KATHY BAKER,
DAVID LOPEZ, GILBERT PADILLA,
MAGDALENO DIMAS, BENJAMIN RODRIGUEZ,
AND UNITED FARM WORKERS ORGANIZING
COMMITTEE, AFL CIO,

vs.

A. Y. ALEE, JACK VAN CLEVE, JEROME PREISS,
T. H. DAWSON, DR. RENE SOLIS, RAUL PENA,
ROBERTO PENA, and JIM ROCHESTER, AND
B. S. LOPEZ

Basis of action: Suit under Rule 23, of the Federal
Rules of Civil Procedure (For preliminary. Injunction)
Jurisdiction under 42 U.S.C.A. Secs. 1983 & 1985, 28
USCA SEC.1343.

ATTORNEYS

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1511 12th Ave., Delano, California.

For Defendant: Frank R. Nye, Jr., Rio Grande City &
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Notice of appeal,
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5.00

[fol.B]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FRANCISCO MEDRANO, KATHY BAKER,
DAVID LOPEZ, GILBERT PADILLA,
MAGDALENO DIMAS, BENJAMIN RODRIGUEZ,
AND UNITED FARM WORKERS ORGANIZING
COMMITTEE, AFL CIO,

Plaintiffs

VS.

CIVIL ACTION NO. _____

A. Y. Allee, JACK VAN CLEVE,
JEROME PREISS, T. H. DAWSON,
DR. RENE SOLIS, RAUL PENA,
ROBERTO PENA, and JIM ROCHESTER,
and B. S. LOPEZ,

Defendants

COMPLAINT

COME NOW the following Plaintiffs as individuals and as class representatives: Francisco Medrano, Kathy Baker, David Lopez, Glibert Padilla, Magdaleno Dimas, Benjamin Rodriguez, and United Farm Workers Organizing Committee, AFL CIO, complaining of the following defendants: S. H. Denson, A. Y. Allee, Jack Van Cleve, Jerome Preiss, T. H. Dawson, Dr. Rene Solis, Raul Pena, Roberto Pena, Jim Rochester, and B. S. Lopez, and as cause of action would show the following:

1. Plaintiff Medrano is a resident of Dallas County, Texas. Plaintiffs Baker, Lopez, Padilla, Dimas and Rodriguez are residents of Starr County, Texas. All plaintiffs are citizens of the United States. Plaintiff United Farm Workers Organizing Committee, AFL CIO is a voluntary unincorporated labor organization affiliated with the AFL CIO, hereinafter denominated the "Union.". Plaintiff Padilla is an officer in that Union. Defendants Allee, Van Cleve, Preiss, Dawson and S. H. Denson are Texas Rangers, employees of the State of Texas, and residents of Dimmit County, Texas.

Defendant Solis is the Sheriff of Starr County, Texas, and resides in said County. Defendants Raul Pena and Roberto Pena are Deputy Sheriffs of Starr County, Texas, and residents of that County, and as such residents of the Southern District of Texas. Defendant B. S. Lopez is a Justice of the Peace in Starr County, Texas, Precinct No. 1.

Defendant Jim Rochester is a Special Deputy of the Starr County Sheriff's Department and a resident of Starr County, Texas, and a resident of the Southern District of Texas.

2. This action is brought by the Plaintiffs individually and as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure. The class of persons on whose behalf this action is prosecuted is all persons who—either because of their membership in said Union, or because of their sympathy and voluntary support of said Union in its labor dispute with certain employers in Starr County, Texas—have engaged in, are engaging in, and desire to continue to engage in constitutionally protected free speech and peaceful assembly,

including lawful peaceful picketing and other forms of publicity. Said group is a group of persons so numerous that joinder of all members is impracticable. There are questions of law common to the class, and the claims of the representative parties are typical of the claims of the class of persons affected by the conduct of the Defendants herein complained of. Said Plaintiffs are representatives of the class will fairly and adequately protect the interests of the class.

3. This court has jurisdiction under 42 U.S.C.A. Secs. 1983 and 1985, and 28 U.S.C.A. Section 1343, this being a claim for redress against certain persons who, acting under color of State law, have conspired to deprive Plaintiffs of their civil rights, privileges and immunities protected by the laws and the Constitution of the United States, and who, acting under color of State law, have deprived Plaintiffs of their constitutionally protected rights, privileges and immunities.

4. Since on or about June 1, 1966, and continuing to the present, the Union and various agricultural and farm workers have been engaged in various concerted activities for the purpose of protecting themselves in their personal work, personal labor, and personal service, as authorized by the laws and constitution of the United States. Since said date, and continuing to the present, officers and members of that organization and other persons sympathetic to their cause have sought, by peaceful picketing and other lawful conduct, to disseminate the facts of working conditions of such workers in Starr County, Texas, and in the Rio Grande Valley of Texas.

5. Since the beginning of such activities and continuing to the present, defendants and other members of

the Starr County Sheriff's Department and other members of the Department of Public Safety of the State of Texas, acting, in their official capacities, and under color of State statutes and other laws, have conspired among themselves in Starr County, Texas, and with employers for the purpose and with the object of depriving Plaintiffs and the class they represent of rights, privileges and immunities protected by the laws and constitution of the United States and of equal protection, privileges and immunities under the United States constitution and laws; in furtherance of which conspiracy and to the injury of the plaintiffs and members of the class they represent and in deprivation of their said rights, privileges and immunities, said Defendants have committed the following acts in Starr County and Hidalgo County, Texas:

a. Unlawful harrassment, threats, searches and seizures;

b. Unlawful and groundless, mass and individual arrests, detention, and confinement accompanied by complete disregard for procedural due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States; and

c. Physical assaults and batteries, causing bodily injury to some of the Plaintiffs.

6. Since on or about June 1, 1966, and continuing until the present, Defendants acting in their official capacities, and acting under color of State statutes and other law, in Starr County and Hidalgo County, Texas, have repeatedly, by their course of conduct, subjected Plaintiffs and members of their class to deprivation of rights, privileges and immunities secured by the Constitu-

tion and laws of the United States, contrary to 42 U.S.C.A./Sec. 1983, as follows:

a. Unlawfully, without legal justification, repeatedly arrested, detained, and confined Plaintiffs and members of their class to defeat fair right of free speech and assembly under the First and Fourteenth Amendments to the Constitution of the United States.

b. Unlawfully arrested, detained and confined Plaintiffs and members of their class without according them procedural due process of law as required by the Fifth and Fourteenth Amendments.

c. Unlawfully threatened, harrassed, and coerced, and physically assaulted and battered Plaintiffs and other members of their class, preventing the exercise of their right of free speech and assembly under the First and Fourteenth Amendments.

7. Specifically, on or about May 26, 1967, Defendants Allee, Van Cleve, and Preiss unlawfully and without warrant or justification arrested Plaintiffs in Hidalgo County and Starr County, Texas, and caused them to be confined in jail, assaulted, and battered Plaintiffs, confiscated personal property belonging to some of said plaintiffs, destroying portions of said property.

And on or about June 1, 1967, Defendants Allee, B. S. Lopez, and Preiss unlawfully and without legal justification assaulted and brutally battered Plaintiffs Magdaleno Dimas and Benjamin Rodriguez causing serious bodily injury to said Dimas and thereafter unlawfully arrested and imprisoned Plaintiffs and other members of the class which they represent.

8. Since on or about May 26, 1967, and continuing to the present, Defendants acting in their official capacities and under color of State statutes and other law have repeatedly deprived Plaintiffs of their right of free expression and speech granted by the First and Fourteenth Amendments of the United States Constitution by unlawfully threatening, intimidating, and coercing members of the press attempting to report the activities of said Plaintiffs and the activities of said Defendants for the purpose of preventing said members of the press reporting Plaintiffs, lawful activities in support of their appeal for public support in furtherance of their lawful concerted activities. Said suppression of press reporting respectively prevents Plaintiffs from exercising their rights of free speech and free expression.

9. The above-described acts and conduct of Defendants were and are in reckless and wanton disregard of the rights and welfare of the citizens whom Defendants have an obligation to protect.

10. Proximately and directly resulting from the unlawful conduct alleged in paragraphs 4, 5, 6, 7, and 8 above, Plaintiffs have been damaged as follows:

a. Loss of their liberty to engage in constitutionally protected speech and assembly;

b. Loss of liberty by imprisonment in jails; and

c. Personal injuries requiring medical attention and expense.

11. Plaintiffs have at all times engaged, or sought to engage in peaceful and lawful exercise of their rights of

free speech and assembly.

Plaintiffs desire to continue to exercise their rights, privileges and immunities, including the right to peacefully picket and advertise their lawful cause.

Defendants threaten to continue to deprive the Plaintiffs of their rights, privileges, and immunities by continued arrests, assaults, harrassment, and confinement.

Plaintiffs fear continued loss of their liberty by repeated arrests, harrassment, confinement, and assaults on their persons depriving them of those rights because of the continued unlawful conduct of Defendants; as recently as May 31, 1967, some of the Plaintiffs or members of the class were again arrested while engaging in peaceful picketing on a public way.

Plaintiffs and other members of the class are suffering and will continue to suffer irreparable injury and deprivation of rights unless Defendants are enjoined against further such conduct. Due to the nature of the rights here sought to be exercised and the fact that this is a strike situation where time is of the essence, there is no adequate remedy at law to protect the rights and privileges and only equitable relief will protect the rights of the Plaintiffs.

ACCORDINGLY, Plaintiffs pray (1) that this Court set this matter for hearing on preliminary injunction, after which the Court grant preliminary injunction against Defendants enjoining them from by any means, including orders, threats, arrests, confinement, or physical assault, preventing Plaintiffs from peacefully and lawfully assembling, picketing and publicizing their labor controversy providing that nothing in said injunction be construed to

affect, prevent, prohibit, or interfere with the Defendants and their deputies, agents, servants, and employees from the lawful discharge of the duties of their offices; (2) that upon trial of the case, said injunction by made permanent.

Respectfully submitted,

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BY _____
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Doran Williams

[fol.C]

CIVIL ACTION NO. 67-B-36

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FRANCISCO MEDRANO, ET AL,

Plaintiffs

vs.

A. Y. ALLEE, ET AL,

Defendants

ANSWER (AS TO CERTAIN OF THE DEFENDANTS)

CRAWFORD C. MARTIN
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LONNY ZWIENER
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CIVIL ACTION NO. 67-B-36

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FRANCISCO MEDRANO, ET AL,

Plaintiffs

vs.

A. Y. ALLEE, ET AL,

Defendants

ANSWER (AS TO CERTAIN OF THE DEFENDANTS)

COME NOW the following defendants in the above styled and numbered cause to-wit: A. Y. Allee, Jack Van Cleve, Jerome Preiss, T. H. Dawson, and S. H. Denson, hereinafter referred to as Defendant Rangers, appearing by and through the Attorney General of Texas.

I.

(a) Defendant Rangers admit that Plaintiff Medrano is a resident of Dallas County, Texas. Defendant Rangers

admit that Plaintiffs Baker, Lopez, Padilla, Dimas and Rodriguez are residents of Starr County, Texas. Defendant Rangers neither admit nor deny that all plaintiffs are citizens of the United States. Defendant Rangers neither admit nor deny that Plaintiff United Farm Workers Organizing Committee, AFL-CIO, is a voluntary unincorporated labor organization affiliated with the AFL-CIO and require strict proof thereof. Defendant Rangers neither admit nor deny that Plaintiff Padilla is an officer in such alleged union.

(b) Defendant Rangers admit that they are employed by the State of Texas and they they reside in Dimmit County, Texas.

(c) Defendant Rangers make no pleading as to the status and residence of the other named defendants.

II.

Defendant Rangers specially deny that the Plaintiff United Farm Workers Organizing Committee, AFL-CIO, have any standing to sue the defendants for the reason that throughout the complaint there is an absolute failure to show that the representative parties named as plaintiffs will fairly and adequately protect the interests of the association and its members as is required by Rule 23.2 of the Federal Rules of Civil Procedure.

III.

(a) Defendant Rangers deny that this court has jurisdiction under 42 U.S.C.A. § 1983, for the reason that there is no showing in the pleadings that any or all of the Defendant Rangers have under color of any statute,

ordinance, regulation, custom or usage of the State of Texas subjected or caused to be subjected any citizen of the United States or person to the deprivation of any rights, privileges or immunities secured by the Constitution and laws of the United States of America.

(b) Defendant Rangers deny that this court has jurisdiction under 42 U.S.C.A. §1985, for the reason that there is no allegation or showing that any of the following things have been done.

1. No officer of the United States Government has been prevented from doing his duty.

2. No party or witness has been prevented from freely attending court.

3. None of the defendants have gone in disguise on the highways or premises of another for the purpose of denying equal protection of the laws or equal privileges and immunities, nor has anyone been prevented from voting or advocating the election of any person.

(c) Defendant Rangers deny that this court has jurisdiction under 28 U.S.C.A. §1343 for the following reasons:

1. No damages are sought for injury for any act coming under 42 U.S.C.A. §1985.

2. No damages are sought from any person for failing to prevent wrongs covered in 42 U.S.C.A. §1985.

3. No redress is sought for the deprivation under color of any law of the State of Texas or statute, regulation, custom or usage thereunder of any Federal

Constitutional right or right granted by Act of Congress.

4. No damages or equitable relief is sought under any Act of Congress providing for the protection of civil rights, including the right to vote.

(d) Defendant Rangers deny that they have conspired to deprive plaintiffs of their civil rights or that they have conspired for any purpose.

IV.

Defendant Rangers neither admit nor deny that the alleged union and various agricultural and farm workers have been engaged in various concerted activities for the purpose of protecting themselves in their personal work, personal labor, and personal service, and require strict proof thereof. Defendant Rangers neither admit nor deny that the officers and members of the alleged union and other persons sympathetic to their cause have sought by peaceful picketing and other lawful conduct to disseminate the facts of working conditions in Starr County, Texas, and require strict proof thereof.

V.

Defendants deny generally that they have conspired and acted together among themselves or with others or that they have acted individually under color of State statutes and other laws with the object of depriving plaintiffs and the class they allegedly represent of any rights, privileges and immunities protected by the laws and Constitution of the United States or of equal protection, privileges and immunities under the United States Constitution and laws,

or that they have in any way injured plaintiffs or the members of the class plaintiffs allegedly represent.

(a) Defendant Rangers specifically deny that they have indulged in unlawful harassment, threats, searches and seizures.

(b) Defendant Rangers deny that they have indulged in unlawful and groundless mass and individual arrests, detention and confinement accompanied by complete disregard for procedural due process of law guaranteed by the United States Constitution.

(c) Defendant Rangers deny that they have indulged in physical assault and batteries which caused bodily injury to some of the plaintiffs.

VI.

Defendant Rangers generally deny that they have during the time indicated in the complaint subjected plaintiffs and members of their alleged class to deprivation of rights, privileges, and immunities secured by the Constitution and laws of the United States and specifically deny the individual allegations below.

(a) Defendant Rangers deny that they have unlawfully, without legal justification, repeatedly arrested, detained and confined plaintiffs and members of their class in order to defeat a fair right of free speech and assembly under the First and Fourteenth Amendments of the Constitution of the United States.

(b) Defendant Rangers deny that they have unlawfully arrested, detained and confined plaintiffs and members of

their alleged class without according them procedural due process of law as required by the Fifth and Fourteenth Amendments.

(c) Defendant Rangers deny that they have unlawfully threatened, harassed, and coerced, and physically assaulted and battered plaintiffs and other members of their class, thereby preventing the exercise of their right of free speech and assembly under the First and Fourteenth Amendments.

VII.

(a) Defendants Allee, Van Cleve, and Preiss deny that they unlawfully and without warrant or justification arrested plaintiffs in Hidalgo and Starr County, Texas on May 26, 1967, and caused them to be confined in jail, assaulted, and battered. Defendants Allee, Van Cleve and Preiss deny that they unlawfully confiscated personal property belonging to some of the plaintiffs and that they unlawfully destroyed portions of said property.

(b) Defendants Allee and Preiss deny that on or about June 1, 1967, they unlawfully and without legal justification assaulted and brutally battered Plaintiffs Dimas and Rodriguez, thereby causing serious bodily injury to Dimas, and that they thereafter unlawfully arrested and imprisoned plaintiffs and other members of the alleged class which they claim to represent.

VIII.

Defendant Rangers deny that they have denied plaintiffs of their right of free expression and speech granted by the First and Fourteenth Amendments of the United States

Constitution. Defendant Rangers deny that they have unlawfully threatened, intimidated and coerced members of the press, who were attempting to report the activities of the plaintiffs and the defendants. Defendant Rangers deny that they have acted with the purpose of preventing the members of the press from reporting things that they observed.

IX.

Defendant Rangers deny that they have indulged in any acts or conducts in reckless and wanton disregard of the rights and welfare of any citizens.

X.

(a) Defendant Rangers deny that the plaintiffs have lost their liberty to engage in constitutionally protected speech and assembly.

(b) Defendant Rangers deny that plaintiffs have lost their liberty by reason of imprisonment in jail, except insofar as imprisonment was necessary for effective law enforcement.

(c) Defendant Rangers deny that they have unlawfully caused personal injuries requiring medical attention and expense.

XI.

(a) Defendant Rangers deny that plaintiffs have at all times engaged, or sought to engage, in peaceful and lawful exercise of their right to free speech and assembly.

(b) Defendant Rangers have no way of knowing whether or not plaintiffs desire to continue to exercise their rights, privileges, and immunities, including the right to peacefully picket and advertise their lawful cause.

(c) Defendant Rangers deny that they threatened to continue to deprive the plaintiffs of any rights, privileges and immunities by any means.

(d) Defendant Rangers neither admit nor deny that plaintiffs have certain fears but allege affirmatively that plaintiffs have no reason to fear any action on the part of Defendant Rangers so long as plaintiffs conduct themselves peacefully and in accordance with law.

(e) Defendant Rangers deny that plaintiffs and other members of the alleged class are suffering and will continue to suffer irreparable injury and deprivation of rights. Defendant Rangers deny that there is a strike situation where time is of the essence as there has been so showing of any activity under the laws of the State of Texas or of the United States indicating protected union activity.

XII.

Defendant Rangers affirmatively urge for the consideration of the court that any arrests made of any of the plaintiffs and any physical harm that may have resulted to any of the plaintiffs during the time concerned in this lawsuit, resulted from lawful activities of the Defendant Rangers in doing what appeared to be reasonably necessary to them at the time in the carrying out of their lawful duties to prevent riots, affrays, or other disturbances.

WHEREFORE, PREMISES CONSIDERED, Defendant Rangers pray the court that plaintiffs take nothing by their suit, that said cause of action be dismissed, and that plaintiffs be sent hence without day, and of this they put themselves upon the country.

Respectfully submitted,

**CRAWFORD C. MARTIN
Attorney General of Texas**

**R. L. LATTIMORE
Assistant Attorney General**

**ALLO CROW
Assistant Attorney General**

**LONNY ZWIENER
Assistant Attorney General**

**HOWARD M. FENDER
Assistant Attorney General**

ATTORNEYS FOR DEFENDANTS

**BOX "R" CAPITOL STATION
AUSTIN, TEXAS 78711**

CERTIFICATE OF SERVICE

I Howard M. Fender, Assistant Attorney General of Texas, do hereby certify that a copy of the above and foregoing Answer (As To Certain Of The Defendants) has been deposited in the United States Mail, postage prepaid, to Dixie and Schulman, Suite 505 Scanlan Building, Main at Preston, Houston, Texas 77002; Jerome Cohen, 1511 12th Avenue, Delano, California (via air mail); and, Doran Williams, P. O. Box 54, Rio Grande City, Texas, Attorneys for Plaintiffs, this the 3rd day of August, 1967.

HOWARD M. FENDER

[fol.D]

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF TEXAS

BROWNSVILLE DIVISION

FRANCISCO MEDRANO, KATHY BAKER,
DAVID LOPEZ, GILBERT PADILLA,
MAGDALENO DIMAS, BENJAMIN RODRIGUEZ,
AND UNITED FARM WORKERS ORGANIZING
COMMITTEE, AFL-CIO,

Plaintiffs

VS.

CIVIL ACTION NO. 67 B 36

A. Y. ALLEE, JACK VAN CLEVE, JEROME
PREISS, T. H. DAWSON, DR. RENE SOLIS,
RAUL PENA, ROBERTO PENA, AND JIM
ROCHESTER, AND B. S. LOPEZ, AND S. H.
DENSON

Defendants

AMENDED COMPLAINT

COME NOW the following Plaintiffs as individuals and as class representatives: Francisco Medrano, Kathy Baker, David Lopez, Gilbert Padilla, Magdaleno Dimas, Benjamin Rodriguez, and United Farm Workers Organizing Committee, AFL-CIO, complaining of the following Defendants: S. H. Denson, A. Y. Allee, Jack Van Cleve, Jerome Preiss, T. H. Dawson, Dr. Rene Solis, Raul Pena, Roberto Pena, Jim Rochester, and B. S. Lopez, and as cause of action would show the following:

1. Plaintiff Medrano is a resident of Dallas County, Texas. Plaintiffs Baker, Lopez, Padilla, Dimas and Rodriguez are residents of Starr County, Texas. All Plaintiffs are citizens of the United States. Plaintiff United

Farm Workers Organizing Committee, AFL-CIO is a voluntary unincorporated labor organization affiliated with the AFL-CIO, hereinafter denominated the "Union". Plaintiff Padilla is an officer in that Union.

Defendants Allee, Van Cleve, Preiss, Dawson and Denson are Texas Rangers, employees of the State of Texas, and residents of Dimmit County, Texas.

Defendant Solis is the Sheriff of Starr County, Texas, and resides in said County. Defendants Raul Pena and Roberto Pena are Deputy Sheriffs of Starr County, Texas, and residents of that County, and as such residents of the Southern District of Texas. Defendant B. S. Lopez is a Justice of the Peace in Starr County, Texas, Precinct No. 1.

Defendant Jim Rochester is a Special Deputy of the Starr County Sheriff's Department and a resident of Starr County, Texas, and a resident of the Southern District of Texas. At material times this defendant has also been a vice-principal or agent of one of the private employers hereinafter referred to.

2. This action is brought by the Plaintiffs individually and as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure. The class of persons on whose behalf this action is prosecuted is all persons who—either because of their membership in said Union, or because of their sympathy and voluntary support of said Union in its labor dispute with certain employers in Starr County, Texas—have engaged in, are engaging in, and desire to continue to engage in constitutionally protected free speech and peaceful assembly, including lawful peaceful picketing and other forms of

publicity. Said group is a group of persons so numerous that joinder of all members is impracticable. There are questions of law common to the class, and the claims of the representative parties are typical of the claims of the class of persons affected by the conduct of the Defendants herein complained of. Said Plaintiffs as representatives of the class will fairly and adequately protect the interests of the class.

3. This court has jurisdiction under 42 U.S.C.A. § 1983 and 1985, and 28 U.S.C.A. § 1343, this being a claim for redress against certain persons who, acting under color of State law, have conspired to deprive Plaintiffs of their civil rights, privileges and immunities protected by the laws and the Constitution of the United States, and who, acting under color of State law, have deprived Plaintiffs of their constitutionally protected rights, privileges and immunities.

Also, this is a civil action seeking declaratory and injunctive relief against certain statutes of the State of Texas. It seeks to prevent and redress the deprivation, under color of law of the State of Texas, of rights, privileges and immunities secured by the Constitution and laws of the United States. Jurisdiction of this Court is founded upon U.S.C. 28, Section 1343(3) and Sections 2201 and 2202, and 42 U.S.C., Sections 1983 and 1985, and the First and Fourteenth Amendments to the Constitution of the United States. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C., Sections 2281 and 2284, because it seeks inter alia, injunctive relief against the enforcement of statutes of the State of Texas upon the ground of their unconstitutionality, both on their face and as applied, under the First and Fourteenth Amendments to the Constitution of the United States.

4. Since on or about June 1, 1966, and continuing to the present, the Union and various agricultural and farm workers have been engaged in various concerted activities for the purpose of protecting themselves in their personal work, personal labor, and personal service, as authorized by the laws and Constitution of the United States. Since said date, and continuing to the present, officers and members of that organization and other persons sympathetic to their cause have sought, by peaceful picketing and other lawful conduct, to disseminate the facts of working conditions of such workers in Starr County, Texas, and in the Rio Grande Valley of Texas.

Certain persons who were Union agents or members at material times hereto are Eugene Nelson, William Chandler, Tony Orendein, Bengamin Rodriguez, Cathy Lynch, Elida Garcia, Librado de la Cruz and Reynaldo de la Cruz.

5. Since the beginning of such activities and continuing to the present, Defendants and other members of the Starr County Sheriff's Department and other members of the Department of Public Safety of the State of Texas, acting in their official capacities and under color of State statutes and other laws, have conspired among themselves in Starr County, Texas, and with other public officials, one of whom is Hon. Randall Nye, County Attorney of Starr County, who at material times hereto has also been private counsel for one or more of the employers hereinafter referred to, and likewise with employers of the said farm and agricultural workers, for the purpose and with the object of depriving Plaintiffs and the class they represent of rights, privileges and immunities protected by the laws and Constitution of the United States and of equal protection, privileges and immunities under the United

States Constitution and laws; in furtherance of which conspiracy and to the injury of the Plaintiffs and members of the class they represent and in deprivation of their said rights, privileges and immunities, said Defendants have committed the following acts in Starr and Hidalgo Counties, Texas:

a. Unlawful harrassment, threats, searches and seizures;

b. Unlawful and groundless, mass and individual arrests, detention, and confinement accompanys by complete disregard for procedural due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States; and,

c. Physical assaults and batteries, causing bodily injury to some of the Plaintiffs.

6. Since on or about June 1, 1966, and continuing until the present, Defendants acting in their official capacities, and acting under color of State statutes and other law, in Starr County and Hidalgo County, Texas, have repeatedly, by their course of conduct, subjected Plaintiffs and members of their class to deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States, contrary to 42 U.S.C.A. §1983, as follows:

a. Unlawfully, without legal justification, repeatedly arrested, detained, and confined Plaintiffs and members of their class to defeat their right of free speech and assembly under the First and Fourteenth Amendments to the Constitution of the United States.

b. Unlawfully arrested, detained and confined Plaintiffs and members of their class without according them procedural due process of law as required by the Fifth and Fourteenth Amendments.

c. Unlawfully threatened, harrassed, and coerced, and physically assaulted and battered Plaintiffs and other members of their class, preventing the exercise of their right of free speech and assembly under the First and Fourteenth Amendments.

7. Specifically, Defendants and their co-conspirators, acting together, have committed the following overt acts:

7.1 Soon after the commencement of Plaintiff's activities on June 1, 1966, and continuing until the filing of suit, a certain newspaper known as "La Verdad" has been published in Corpus Christi, Texas, by private parties, which publication has regularly, systematically, and vigorously attacked and criticized plaintiff Union, its leaders, programs and sympathizers. Said publication has been regularly and systematically distributed to the public in Rio Grande City through and from the office of the Sheriff of Starr County.

7.2 On or about June 2, 1966, member Nelson was engaged in peaceful picketing at the Roma international bridge. Defendant Raul Pena arrested Nelson and caused him to be incarcerated in the Starr County jail for four hours without charge. Co-conspirator Nye then sought to intimidate Nelson by interrogation.

7.3 On or about October 12, 1966, Union members were peacefully picketing on United States Highway 83 adjacent to Rancho Grande Farms, appealing to

employees thereof to make common cause with the Union. Member Chandler was sitting in a parked car near the pickets. Defendant Raul Pena arrived with several deputy sheriffs. The deputies drove their car between the pickets and the workers, disembarked, and began shouting to the employees of Rancho Grande Farms in Spanish. Member Chandler approached the deputies and asked why they were there, whereupon they arrested Chandler and charged him with the use of loud and vociferous language calculated to disturb the inhabitants of Highway 83 in violation of Texas Penal Code, Article 474.

7.4 On or about October 24, 1966, Union's President Arredondo was among a group of persons who had been arrested at the Roma international bridge and taken under arrest to the office of the Sheriff of Starr County in Rio Grande City. As the group was entering the courthouse, he joined the others in chanting "Viva la huelga" (Long live the strike). Deputy Sheriff Ellert physically struck Arredondo and threatened him with a loaded and cocked pistol. He told Arredondo not to utter those words in the courthouse again.

7.5 On or about November 3, 1966, members of the Union engaged in picketing against the packing sheds of La Casita Farms situated near Highway 83 near Rio Grande City. On said occasion said picketing took place on or across the railroad tracks of the Missouri Pacific Railroad. On account thereof, on November 9, 1966, Defendant Roberto C. Pena filed complaint against Irene Chandler, Stephen Lee Holton, Reynaldo de la Cruz, Baldemar Diaz, Tony Orendain, Domingo Arredondo, Ismael Dias, Agustin Serratos, Magdaleno Dimas, and Guillermo de la Cruz, all of whom are Union

leaders or sympathizers, charging them with violation of Article 5154f, the Texas Secondary Picketing Statute. Co-conspirator Nye, as County Attorney, filed an information against each of said persons. On November 9, 1966, warrants of arrest pursuant to said complaint and information were issued and delivered to Texas Rangers who proceeded to arrest the said persons and caused them to be jailed. Article 5154f, which was so invoked, had been declared unconstitutional by the Supreme Court of Texas in the year 1949.

7.6 On or about November 7, 1966, a female picket, Zoila Ozuna, was standing in front of a stopped bus near the entrance to La Casita Farms. Defendant Jim Rochester boarded the said bus and angrily started it in motion in order to deliver its occupants to the farm as workers. In so moving the bus, he struck the said Zoila Ozuna. She attempted to file appropriate charges on account thereof, but the episode was investigated by Texas Rangers who measured distances and interviewed Defendant Jim Rochester, but did not talk to the said Zoila Ozuna or other witnesses. No charges were filed on account of said incident, in sharp contrast to the zeal of Defendants in filing charges against the Union and its sympathizers.

7.7 On or about November 28, 1966, Plaintiffs and other Union members and sympathizers held a rally on the grounds of the Starr County Courthouse. When they placed Union banners and flags on such public property as decorations, Defendant Raul Pena and other deputy sheriffs under his direction followed Plaintiffs and their sympathizers and removed the banners and flags as soon as they were so displayed.

7.8 On or about December 18, 1966, a caravan of Union supporters bearing food and clothing arrived in Rio Grande City. Plaintiff Dimas undertook to direct traffic at the intersection of U. S. Highway 83 and Farm Road 775. On this occasion, Defendant Roberto Pena struck Dimas with his car.

7.9 On or about December 28, 1966, members of the Union were picketing peacefully near the main entrance to La Casita Farms. Defendant Roberto Pena arrested Librado de la Cruz and spuriously charged him with assault on one Manuel Balli. Co-conspirator Nye charged de la Cruz with attempting to prevent Balli from engaging in his vocation on account of the same incident. On the same occasion, Roberto Pena arrested Union members Pedro Dimas, Maximiliano Perez, Eva Medoza, and Matilde A. Garza and charged them with obstructing a public road in violation of Texas Penal Code, Article 784. On the Same occasion he also arrested Pedro Dimas for interfering with the arrest of de la Cruz. On the same occasion he arrested William L. Chandler, Jr. for using loud and vociferous language in violation of Penal Code, Article 474. All these arrests and charges were a spurious, wholesale dispersal of the peaceful picketing.

7.10 On or about December 29, 1966, Union members Reynaldo de la Cruz and Pedro Dimas were in the offices of the Union in Rio Grande City wearing small tin badges of the type found as prizes in boxes of "cracker jacks". Defendant Raul Pena and another deputy sheriff arrested them and caused them to be jailed, charging them with impersonating an officer in violation of Texas Penal Code, Article 429.

7.11 On or about January 26, 1967, five members of the Union, to-wit: Benito Rodriguez, Librado de la Cruz, Reynaldo de la Cruz, Benjamin R. Luna, Jr. and Benjamin R. Luna, Sr. were peacefully gathered on the banks of the Rio Grande River and were engaged in peaceful persuasion directed toward employees of the Trophy Farms to make common cause with the Union. Defendant Roberto Pena and other deputies arrested all of them and charged them with use of abusive language in violation of Penal Code, Article 482. At the same time the officers confiscated the loud speaker which they had with them.

7.12 On or about January 26, 1967, about 7:00 p.m., Plaintiff Padilla and Union member Rev. James Drake engaged in prayer outside the Starr County Courthouse on the premises thereof. Defendant Raul Pena caused the said Drake and Padilla to be arrested for unlawful assembly in violation of Penal Code, Articles 439 and 449, by filing a sworn charge that their actions constituted an unlawful assembly with the intent on their part to deprive the night custodian of the Starr County Courthouse of his peaceful environment in performance of his duties as such custodian.

7.13 On or about February 1, 1967, member Orendain and three other Union members, together with five sympathizers who were Roman Catholic priests, were peacefully assembled on certain private property owned by one Thomas Bazan by permission of the owner. The said group went to the said private property by traversing a road between that property and La Casita Farms, which road is customarily used by the public as a public access road to the Bazan property. After arrival the group engaged in peacefully appealing

to workers in the La Casita fields to make common cause with the Union. Defendant Roberto Pena and Defendant Jim Rochester, acting together, caused the arrest of all of said persons and charged them with disturbing the peace in violation of Texas Penal Code, Article 474.

7.14 On said occasion of February 1, 1967, Plaintiff Rodriguez was walking along the road between certain property owned by said Thomas Bazan and property of La Casita Farms. Defendant James Rochester pursued the said Rodriguez and fired a pistol at Rodriguez. Defendant Rochester jailed Rodriguez and caused him to be charged with disturbing the peace in violation of Texas Penal Code, Article 474.

7.15 On or about April 13, 1967, the National Labor Relations Board conducted an election at the Star Produce Company packing shed, in which election plaintiff Union was a candidate for selection as bargaining representative of the employees of said company under Federal law. At the customary pre-hearing conference held immediately before the opening of the polls, co-conspirator Nye appeared as attorney for the Star Produce Company, although said company was also represented by private attorneys who were specialists in the field of labor law. During the course of the balloting, Defendant Raul Pena and Constable Manuel Benevides appeared at the polling place. Although they were directed to leave by the representative of N.L.R.B., they stationed themselves in their car which was parked alongside the shed near Highway 83. When the polls closed the N.L.R.B. representative carried the ballot box a distance of about 150 yards to the company office for

the purpose of counting the ballots. The said two peace officers followed along behind the said N.L.R.B. representative in their car.

7.16 On or about May 11, 1967, Union member Ismael Diaz and others were engaged in peaceful picketing at the Roma international bridge. Because there was no traffic on said bridge, the picketers entered a car to drive to the international bridge at Rio Grande City, which was about to be opened for traffic at about 8:00 a.m. Defendant Allee overtook and stopped the car containing the picketers, arrested Diaz and caused him to be incarcerated for four hours on charges of driving without a license. Defendant Allee had no cause to stop said car except to interfere with the prospective picketing of the bridge at Rio Grande City. Later, at the Rio Grande City international bridge, while Union members and sympathizers were peacefully picketing on a public road without blocking traffic, Defendant Van Cleve physically pushed Plaintiff Lopez and others. At the same time Defendant Allee told Union members that they should return to work and abandon their strike. Later, Plaintiff Lopez attempted to file charges against Defendant Van Cleve, but co-conspirator Nye has taken no action thereon in contrast to the zeal of Defendants in filing charges against sympathizers of plaintiff Union.

7.17 On or about May 12, 1967, Nelson went to the office of the Sheriff of Starr County to lodge a protest with appropriate enforcement officials against what he believed was partial conduct by the Defendant Rangers near La Casita Farms in interrogating and challenging Union sympathizers who had on that date assembled on the private property of one Solis with the owner's

permission and who were appealing to the workers on La Casita properties to make common cause with the Union. On said occasion Nelson found no Rangers in said office, but he spoke to Constable Manuel Benevides. The said Benevides is the elected constable in Starr County and also an employee of La Casita Farms. During the conversation Nelson stated that United States Senators were about to investigate the situation in the Valley and that there would be some red-faced Rangers. Benevides allowed Nelson to depart, but he later caused Nelson to be arrested by filing a charge against him alleging that, on said occasion, Nelson had seriously threatened to take the life of four named Texas Rangers, or any other Texas Rangers. A warrant was issued pursuant to said charge and was delivered to Texas Rangers for execution. Defendant Van Cleve, acting with three other Rangers, arrested Nelson pursuant to said warrant, and threatened and abused Nelson while he had Nelson under arrest. The charge against Nelson was known to be a ruse by the persons who made it, or caused it to be made. Neither Benevides or anyone acting in concert with him believed in good faith that Nelson had seriously threatened to take the life of all Texas Rangers or any Texas Ranger. Between May 12 and May 14, Defendants Raul Pena and co-conspirator Nye refused to allow Nelson to make bond. On Friday, May 12, Nelson's attorney tendered to Raul Pena a surety bond which had been executed by one Joseph Guerra, who was at all times well known to Raul Pena to be a person who owned substantial real property in Starr County. In refusing said bond on said occasion, Raul Pena threw the bond on the floor and stated that he did not know if the surety owned property (although he well knew that he did) and demanded real property tax receipts which could not be obtained until the

following Monday. On the following Monday, May 15, Defendant Raul Pena permitted Nelson to be released on bond after requiring exhibition to him of approximately 15 pages of tax records reflecting the ownership of thousands of acres of land by the said surety.

7.18 On or about May 18, 1967, Plaintiffs' sympathizers, Reyes Alaniz, Pedro Mendez, Gustavo Diaz, Mario Vera, Guillermo de la Cruz, Donato Bayan, Rafael Trevino, Ramona Olivarez, Anita Rosa, Maria Guadalupe Saenz, Viviana Segonia, Elodia Valadez, Reynaldo de la Cruz, Severo Beanvitez, Benito Rodriguez, Librado de la Cruz, Octavio de la Cruz, Pedro Lopez, Victor Lopez, Magdaleno Dimas, and Horacio P. Carillo were peacefully assembled near the entrance to Trophy Farms on U. S. Highway 83 for the purpose of asking workers for such farm to make common cause with the Union. Defendant Allee and other Texas Rangers arrested Plaintiffs' sympathizers, jailed them and charged them with mass picketing in violation of Article 5154d, Revised Civil Statutes of Texas.

7.19 On or about May 25, 1967, Plaintiffs Padilla, Lopez and Union member Eugene Nelson were crossing a public street in Rio Grande City. Defendant Allee ordered Nelson into his car and later gave the same order to Padilla and Lopez. When two representatives of an investigating committee of the United States Civil Rights Commission approached, Allee explained to them that he wanted the three men to help him investigate a report that someone was creating a disturbance under some bridge. Allee then directed Nelson out of his car but requested the three men to

follow him in their own car. Allee then departed at a high speed and made it impossible for the three men to follow him as he directed.

7.20 On or about May 26, 1967, Plaintiff's sympathizers, Octavis de la Cruz, Irene Chandler, Daria A. Vera, Mario Vera, Benjamin R. Leman, Librado de la Cruz, Cathy Lynch, F. F. Medrano, Kathy Baker, and Magdaleno Dimas were near the intersection of the Missouri Pacific Railroad tracks and Conway Street in Mission, Hidalgo County, Texas. Three or four persons engaged in peaceful picketing at that intersection. All were arrested, jailed and charged with violation of Article 5154f, Revised Civil Statutes of Texas. Five Hundred Dollar (\$500.00) cash bonds were required for their release. The arrests were made by defendant Texas Rangers and said arrests were accompanied by blows, pushes, shoves and menacing and threatening language.

7.21 On or about May 31, 1967, Union member Arredondo and two other Union members were walking along a public road on the west periphery of La Casita Farms. Arredondo and one of the members carried picket signs. The other members talked to workers in the fields through a loud speaker. Defendant Rochester drove a pickup truck between the Union members and the workers and played a radio through his own amplifier in order to drown out the amplifier of the Union members. Defendant Allee arrived on the scene, shook hands with Jim Rochester, and arrested the said three Union members, plus ten other Union members who had remained in or about their nearby cars. Allee caused all of them to be jailed on charges of mass picketing in violation of Article 5154d, Revised Civil Statutes of Texas.

7.22 On or about June 1, 1967, Plaintiffs Magdaleno Dimas and Benjamin Rodriguez were in a house rented by the Union in Rio Grande City. Soon after they finished their evening meal, Defendants Allee, Dawson, Roberto Pena and B. S. Lopez arrived. After soliciting and obtaining Lopez' instruction to arrest Dimas and Rodriguez, Defendants Allee, Dawson and Pena kicked in the door of the house and then struck and injured Dimas and Rodriguez with double-barrelled shotguns, their fists and their feet, arrested them, jailed them, and charged them with disturbing the peace in violation of Article 474, Texas Penal Code.

7.23 On or about June 1, 1967, member Cathy Lynch, Elida Garcia, Librado de la Cruz and Reynaldo de la Cruz were in Mission, Hidalgo County, Texas, near the intersection of the Missouri Pacific Railroad tracks and Conway Street. Said Plaintiffs had peacefully assembled at said location for the purpose of peacefully advertising the dispute between Plaintiffs and the growers in Rio Grande City. Defendant Texas Rangers arrested all four Plaintiffs, jailed them, and charged them with violation of Article 5154f, Revised Civil Statutes of Texas.

8. An integral part of the course of conduct of Defendants above alleged has been the use of certain statutes of the State of Texas for the purpose of jailing, molesting, interfering with and frustrating Plaintiffs in the exercise of their constitutional rights. Defendants have many times publicly announced that they will continue to make arrests, charges and prosecutions under the said statutes, thereby presenting to those who would sympathize with Plaintiffs the prospect of future arrests and prosecutions, thereby chilling the willingness of people to

exercise their First Amendment rights of free speech, assembly, association, and petition for redress of grievances. Furthermore, in addition to the facial unconstitutionality of the statutes utilized by Defendants, Defendants have engaged in selective enforcement by application and arrest under said statutes to all who make common cause with Plaintiffs. Furthermore, Defendants have on numerous occasions utilized statutes for the purpose of arrest and prosecution when, as they well knew, there was no evidence which would support a conviction, the Defendants' sole purpose being to confront Plaintiffs with the fear and danger of arrest and prospect of interminable court litigation as the price of sympathy with Plaintiffs and participation with them.

9. As heretofore alleged, Defendants have acted under color of certain statutes of the State of Texas and have purposely entered into a scheme or plan of concerted and joint action with other persons to subject Plaintiffs to the deprivation of their rights, privileges and immunities secured to them by the Constitution and Laws of the United States. The statutes so utilized which are here challenged as to their constitutionality are as follows:

A. Article 5154d of Vernon's Annotated Civil Statutes of Texas provides:

Art. 5154d. Picketing

Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

"Mass picketing," as that term is used herein, shall mean any form of picketing in which:

1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the

premises being picketed, or within fifty (50) feet of any other picket or pickets.

2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions.

The term "picket," as used in this Act, shall include any person stationed by or acting for and in behalf of any organization for the purpose of inducing, or attempting to induce, anyone not to enter the premises in question or to observe the premises so as to ascertain who enters or patronizes the same, or who by any means follows employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

The term "picketing," as used in this Act, shall include the stationing or posting of one's person or of others for and in behalf of any organization to induce anyone not to enter the premises in question, or to observe the premises so as to ascertain who enters or patronizes the same, or to follow employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

Sec. 2. It shall be unlawful for any person, singly or in concert with others, by use of insulting, threatening or obscene language, to interfere with, hinder, obstruct, or intimidate, or seek to interfere with, hinder, obstruct, or intimidate, another in the exercise of his lawful right to work, or to enter upon the performance of any lawful vocation, or from freely entering or leaving any premises.

Sec. 3. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activities, where any part of such picketing is accompanied by slander, libel, or the public display or publication of oral or written misrepresentations.

Sec. 4. It shall be unlawful for any person, singly or in concert with others, to engage in picketing, the purpose of which, directly or indirectly, is to secure the disregard, breach or violation of a valid subsisting labor agreement arrived at between an employer and the representatives designated or selected by the employees for the purpose of collective bargaining, or certified as the bargaining unit under the provisions of the National Labor Relations Act.¹

Sec. 4a. It shall be unlawful for any person, singly or in concert with others, to declare, publicize or advertise the continued existence of picketing, actual or constructive, at any point or directed against any premises after a court of competent jurisdiction has enjoined and restrained the continuance of such picketing at said point or premises.

Sec. 5. Any person guilty of violating any of the Sections of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500), or be imprisoned in jail not to exceed ninety (90) days, or both. Each separate act of violation shall constitute a separate offense.

Sec. 6. If any clause, sentence, paragraph or part of this Act or the application thereof, to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act and the application thereof, it being the expressed intention of the Legislature to enact such Act without respect to such

Section or part so held to be invalid. Acts 1947, 50th Leg., p. 239, ch. 138.

¹ 29 U.S.C.A. § 151 et seq.

The Texas Mass Picketing Statute is unconstitutional, both on its face and as applied, under the First and Fourteenth Amendments to the Constitution of the United States because:

1. It is vague, in that it fails to establish any ascertainable standard of guilt.

2. It is overbroad in that it encompasses within its scope activity which is clearly protected by federal guarantees of free speech, assembly and petition.

3. It is susceptible of sweeping and improper application.

4. It abridges Plaintiffs' rights of free speech, assembly and petition in that it punishes in all cases the presence of more than two pickets within 50 feet of any entrance or 50 feet of any other picket, and by so defining pickets as to include practically everyone, and by its vague and amorphous prohibition of language and communication.

B. Article 5154f of Vernon's Annotated Civil Statutes of Texas provides:

Art. 5154f. Secondary strikes, picketing and boycotts prohibited

Section 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or

agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

Sec. 2. As used in this Act:

a. The term "labor union" means every association, group, union, national and local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing in part for the purpose of protecting themselves and improving their working conditions, wages, or employment relationships in any manner, and shall include the local, state, national and international affiliates of such organizations or unions.

b. "Secondary strike" shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

c. The term "picket" shall include any person stationed by or acting in behalf of any organization for the purpose of inducing anyone not to enter the premises in question; or for apprising the public by signs, banners, or other means, of the existence of a labor dispute at or near the premises in question; or for observing the premises so as to ascertain who enters or patronizes the same; or any person who by any means follows employees or patrons of the place being picketed either to or from such place so as to either observe them or to attempt to persuade them to cease entering or patronizing the premises being picketed.

d. The term "secondary picketing" shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as

that term is defined in this Act, exists between such employer and his employees.

e. The term "secondary boycott" shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damage to any person, firm or corporation for whom they are not employees, by

(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

(2) Picketing such person, firm or corporation; or

(3) Refusing to handle, install, use or work on the equipment or supplies of such person, firm or corporation; or

(4) Instigating or formenting a strike against such person, firm or corporation; or

(5) Interfering with or attempting to prevent the free flow of commerce; or

(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute.

f. The term "employer" means any person, firm or corporation who engages the services of an employee.

g. The term "employee" shall include any person, other than an independent contractor, working for another for hire in the State of Texas.

h. The term "labor dispute" is limited to and means any controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, a controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee members only of such union, a labor dispute within the meaning of this Act.

Sec. 3. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding Five Hundred (\$500.00) Dollars, or by confinement in the county jail not to exceed six months, or by both such fine and imprisonment.

Sec. 4. Any person who violates any of the provisions of this Act shall be liable to the person suffering the same for all damages resulting therefrom, and the person damaged is hereby given right of action and access to the courts to redress such wrong or damage, including injunctive relief; and any association or labor union, local, state, national or international, which represents or purports to represent any such person violating any of the provisions of this Act shall be jointly and severally liable with any such person for all such damages resulting thereby.

Sec. 5. The State of Texas, through its Attorney General or any District or County Attorney, may institute a suit in the District Court to enjoin any person, association of persons, labor union, firm or corporation, or any officer, agent, servant or employee of such person, association of persons, labor union, firm or corporation, from violating any provision of this Act.

Sec. 6. In any suit or cause of action arising under this Act, venue shall lie: (1) in the county where such violation is alleged to have occurred; (2) in the county of the residence of the defendant; (3) in the county of the residence of either defendant if there be two or more defendants.

Sec. 7. All laws and parts of laws in conflict herewith are hereby repealed.

Sec. 8. If any section, sentence, phrase or part of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the

remaining portions thereof; it being the intention of the Legislature to pass the constitutional sections, sentences, phrases and parts of this Act even though some one or more sections, sentences, phrases or parts shall be held to be invalid. Acts 1947, 50th Leg., p. 779, ch. 387.

The said Texas Statute is unconstitutional, both on its face and as applied, under the First and Fourteenth Amendments to the Constitution of the United States because:

1. It is vague in that it fails to establish any ascertainable standard of guilt.

2. It is overbroad in that it encompasses within its scope activity which is clearly protected by federal guarantees of free speech, assembly and petition.

3. It is susceptible of sweeping and improper application.

4. It abridges Plaintiffs' rights of free speech, assembly and petition, in that it punishes the exercise thereof because of the lack of participation therein of a majority of the employees of an employer, regardless of the pertinence, truth and legality of the message to be communicated.

In this connection, Plaintiffs show the Court that the said Statute has been declared unconstitutional in pertinent respects by the Supreme Court of Texas in the case of *International Union of Operating Engineers v. Cox*, 148 Tex. 42, 219 S.W.2d 787, in the year 1949.

C. Articles 439 and 449 of the Penal Code of the State of Texas, known as the Unlawful Assembly Statutes, provide:

Article 439. 435, 299 "Unlawful assembly"

An "unlawful assembly" is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof.

Art. 449. 445, 309 To prevent any person from pursuing his labor

If the purpose of the unlawful assembly be to prevent any person from pursuing any labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another, the punishment shall be by fine not exceeding five hundred dollars.

The above Texas Unlawful Assembly Statutes are unconstitutional, both on their face and as applied, under the First and Fourteenth Amendments to the Constitution of the United States because:

1. They are vague, in that they fail to establish any ascertainable standard of guilt.
2. They are overbroad in that they encompass within their scope activity which is clearly protected by federal guarantees of free speech, assembly and petition.
3. They are susceptible of sweeping and improper application.

4. Article 439 abridges Plaintiffs' rights of free speech, assembly and petition in that it punishes the aiding of each other in any manner to deprive any person of any right or to disturb him in the enjoyment thereof, thus punishing concerted action to do things which are not unlawful.

D. Article 474 of the Penal Code of the State of Texas, known as the Disturbing The Peace Statute, provides:

Art. 474. 470, 334 Disturbing the peace

Whoever shall go into or near any public place, or into or near any private house, and shall use loud and vociferous, or obscene, vulgar or indecent language or swear or curse, or yell or shriek or expose his or her person to another person of the age of sixteen (16) years or over, or rudely display any pistol or deadly weapon, in a manner calculated to disturb the person or persons present at such place or house, shall be punished by a fine not exceeding Two Hundred Dollars (\$200). As amended Acts 1950, 51st Leg., 1st C.S., p. 50, ch. 10, § 1.

The Texas Disturbing The Peace Statute is unconstitutional, both on its face and as applied, under the First and Fourteenth Amendments to the Constitution of the United States because:

1. It is vague, in that it fails to establish any ascertainable standard of guilt.

2. It is overbroad in that it encompasses within its scope activity which is clearly protected by federal guarantees of free speech, assembly and petition.

3. It is susceptible of sweeping and improper application.

E. Article 482 of the Texas Penal Code provides:

Art. 482. 1020, 599 Abusive language

Any person who shall in the presence or hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars. Acts 1887, p. 13.

The Texas Abusive Language Statute is unconstitutional, both on its face and as applied, under the First and Fourteenth Amendments to the Constitution of the United States because:

1. It is vague, in that it fails to establish any ascertainable standard of guilt.

2. It is overbroad in that it encompasses within its scope activity which is clearly protected by federal guarantees of free speech, assembly and petition.

3. It is susceptible of sweeping and improper application.

F. Article 784 of the Penal Code of the State of Texas provides:

Art. 784. [812] [480] [405] Obstructing public road, street, etc.

Whoever shall wilfully obstruct or injure or cause to be obstructed or injured in any manner whatsoever

any public road or highway or any street or alley in any town or city, or any public bridge or causeway, within this State, shall be fined not exceeding two hundred dollars. Acts 1860, p. 97; Acts 1913, p. 258.

The Texas Obstructing Public Road Statute is unconstitutional, both on its face and as applied, under the First and Fourteenth Amendments to the Constitution of the United States because:

1. It is vague, in that it fails to establish any ascertainable standard of guilt.
2. It is overbroad in that it encompasses within its scope activity which is clearly protected by federal guarantees of free speech, assembly and petition.
3. It is susceptible of sweeping and improper application.
9. Since on or about May 26, 1967, and continuing to the present, Defendants acting in their official capacities and under color of State statutes and other law have repeatedly deprived Plaintiffs of their right of free expression and speech granted by the First and Fourteenth Amendments of the United States Constitution by unlawfully threatening, intimidating, and coercing members of the press attempting to report the activities of said Plaintiffs and the activities of said Defendants for the purpose of preventing said members of the press from reporting Plaintiffs' activities and appeals and Plaintiffs' trials and tribulations at the hands of Defendants and their co-conspirators. Said suppression of press reporting respectively prevents Plaintiffs from exercising their rights of free speech and free expression.

10. The above-described acts and conduct of Defendants were and are in reckless and wanton disregard of the rights and welfare of the citizens whom Defendants have an obligation to protect.

11. Plaintiffs have at all times engaged, or sought to engage in peaceful and lawful exercise of their rights of free speech and assembly.

Plaintiffs desire to continue to exercise their rights, privileges and immunities, including the right to peacefully picket and advertise their lawful cause.

Defendants threaten to continue to deprive the Plaintiffs of their rights, privileges and immunities by continued arrests, assaults, harrassment and confinement, in general and by application of the complained of statutes above quoted.

WHEREFORE, Plaintiffs pray that a three-judge court be convened pursuant to 28 U.S.C., Sections 2281 and 2284 to hear this action, that this cause be expedited and heard at the earliest practicable date, and that this Court:

1. After hearing, issue a permanent injunction restraining the Defendants from enforcing against Plaintiffs and their class each of the above specified Statutes of the State of Texas; and a declaratory judgment declaring that each of the above mentioned Statutes is void on its face, null and void as violative of the Constitution of the United States and/or as applied to the conduct of the Plaintiffs and members of their class herein.

2. Issue a permanent injunction restraining the Defendants and all persons and public officials acting in concert

with them from the selective arrest and prosecution of Plaintiffs and members of their class for the purpose of chilling or discouraging them in the exercise of their constitutional rights, including the arrest and filing of charges on spurious and frivolous charges for such purposes.

3. Issue a permanent injunction restraining the Defendants and all public officials or private persons acting in concert with them from by any means, including orders, threats, arrests, confinement or physical assault, preventing Plaintiffs from peacefully and lawfully assembling, picketing and publicizing their labor controversy.

Respectfully submitted,

DIXIE & SCHULMAN
505 Scanlan Building
Houston, Texas 77002
Capitol 3-4444

By _____
Chris Dixie

By _____
Robert E. Hall

GEROME COHEN
1511 Twelfth Avenue
Delano, California

DORAN WILLIAMS
P. O. Box 54
Rio Grande City, Texas

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The foregoing Amended Complaint was served upon adverse counsel on this the 29th day of October, 1967, by depositing a copy thereof in the United States Mail, with postage affixed and properly addressed, as follows:

Mr. Frank R. Nye, Jr.
Attorney-at-Law
P. O. Box 737
Rio Grande City, Texas 78582

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Honorable Crawford C. Martin
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Allo Crow
Lonny Zweiner and
Howard M. Fender,
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McAllen, Texas 78501

Chris Dixie

[fol.E]

CIVIL ACTION NO. 67-B-36

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FRANCISCO MEDRANO, ET AL,

Plaintiffs

VS.

A. Y. ALLEE, ET AL,

Defendants

AMENDED ANSWER
(AS TO CERTAIN OF THE DEFENDANTS)

CRAWFORD C. MARTIN
Attorney General of Texas

R. L. LATTIMORE
Assistant Attorney General

ALLO CROW
Assistant Attorney General

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ATTORNEYS FOR DEFENDANTS

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CIVIL ACTION NO. 67-B-36

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FRANCISCO MEDRANO, ET AL,

Plaintiffs

vs.

A. Y. ALLEE, ET AL,

Defendants

AMENDED ANSWER
(AS TO CERTAIN OF THE DEFENDANTS)

COME NOW the following defendants in the above styled and numbered cause to-wit: A. Y. Allee, Jack Van Cleve, Jerome Preiss, T. H. Dawson, and S. H. Denson, hereinafter referred to as Defendant Rangers, appearing by and through the Attorney General of Texas.

I.

(a) Defendant Rangers admit that Plaintiff Medrano is a resident of Dallas County, Texas. Defendant Rangers admit that Plaintiffs Baker, Lopez, Padilla, Dimas and Rodriguez are residents of Starr County, Texas. Defendant Rangers neither admit nor deny that all plaintiffs are citizens of the United States. Defendant Rangers neither admit nor deny that Plaintiff United Farm Workers Organizing Committee, AFL-CIO, is a voluntary unincorporated labor organization affiliated with the AFL-CIO and require strict proof thereof. Defendant Rangers neither admit nor deny that Plaintiff Padilla is an officer in such alleged union.

(b) Defendant Rangers admit that they are employed by the State of Texas and that they reside in Dimmit County, Texas.

(c) Defendant Rangers make no pleading as to the status and residence of the other named defendants.

II.

Defendant Rangers specially deny that the Plaintiff United Farm Workers Organizing Committee, AFL-CIO, have any standing to sue the defendants for the reason that throughout the complaint there is an absolute failure to show that the representative parties named as plaintiffs will fairly and adequately protect the interests of the association and its members as is required by Rule 23.2 of the Federal Rules of Civil Procedure.

III.

(a) Defendant Rangers deny that this court has jurisdiction under 42 U.S.C.A. §1983, for the reason that there is no showing in the pleadings that any or all of the Defendant Rangers have under color of any statute, ordinance, regulation, custom or usage of the State of Texas subjected or caused to be subjected any citizen of the United States or person to the deprivation of any rights, privileges or immunities secured by the Constitution and laws of the United States of America.

(b) Defendant Rangers deny that this court has jurisdiction under 42 U.S.C.A. §1985, for the reason that there is no allegation or showing that any of the following things have been done.

1. No officer of the United States Government has been prevented from doing his duty.

2. No party or witness has been prevented from freely attending court.

3. None of the defendants have gone in disguise on the highways or premises of another for the purpose of denying equal protection of the laws or equal privileges and immunities, nor has anyone been prevented from voting or advocating the election of any person.

(c) Defendant Rangers deny that this court has jurisdiction under 28 U.S.C.A. §1343 for the following reasons:

1. No damages are sought for injury for any act coming under 42 U.S.C.A. §1985.

2. No damages are sought from any person for failing to prevent wrongs covered in 42 U.S.C.A. § 1985.

3. No redress is sought for the deprivation under color of any law of the State of Texas or statute, regulation, custom or usage thereunder of any Federal Constitutional right or right granted by Act of Congress.

4. No damages or equitable relief is sought under any Act of Congress providing for the protection of civil rights, including the right to vote.

(d) Defendant Rangers deny that they have conspired to deprive plaintiffs of their civil rights or that they have conspired for any purpose.

(e) Although Defendant Rangers deny that any cause of action has been presented for consideration of this court, Defendant Rangers admit that plaintiffs' pleadings entitle them to have whatever hearing they may deserve before a three-judge court.

IV.

(a) Defendant Rangers neither admit nor deny that the alleged union and various agricultural and farm workers have been engaged in various concerted activities for the purpose of protecting themselves in their personal work, personal labor, and personal service, and require strict proof thereof.

(b) Defendant Rangers neither admit nor deny that the officers and members of the alleged union and other persons sympathetic to their cause have sought by peaceful picketing and other lawful conduct to disseminate the

facts of working conditions in Starr County, Texas, and require strict proof thereof.

(c) Defendant Rangers neither admit nor deny that Eugene Nelson, William Chandler, Tony Orendein, Benjamin Rodriguez, Cathy Lynch, Elida Garcia, Librado de la Cruz and/or Reynaldo de la Cruz were Union agents or members at times material to this lawsuit, and require strict proof thereof.

V.

Defendant Rangers deny generally that they have conspired and acted together among themselves or with others or that they have acted individually under color of State statutes and other laws with the object of depriving plaintiffs and the class they allegedly represent of any rights, privileges and immunities protected by the laws and Constitution of the United States or of equal protection, privileges and immunities under the United States Constitution and laws, or that they have in any way injured plaintiffs or the members of the class plaintiffs allegedly represent.

(a) Defendant Rangers specifically deny that they have indulged in unlawful harassment, threats, searches and seizures.

(b) Defendant Rangers deny that they have indulged in unlawful and groundless mass and individual arrests, detention and confinement accompanied by complete disregard for procedural due process of law guaranteed by the United States Constitution.

(c) Defendant Rangers deny that they have indulged in physical assault and batteries which caused bodily injury to some of the plaintiffs.

VI.

Defendant Rangers generally deny that they have during the time indicated in the complaint subjected plaintiffs and members of their alleged class to deprivation of rights, privileges, and immunities secured by the Constitution and laws of the United States and specifically deny the individual allegations below.

(a) Defendant Rangers deny that they have unlawfully, without legal justification, repeatedly arrested, detained and confined plaintiffs and members of their class in order to defeat a fair right of free speech and assembly under the First and Fourteenth Amendments of the Constitution of the United States.

(b) Defendant Rangers deny that they have unlawfully arrested, detained and confined plaintiffs and members of their alleged class without according them procedural due process of law as required by the Fifth and Fourteenth Amendments.

(c) Defendant Rangers deny that they have unlawfully threatened, harassed, and coerced, and physically assaulted and battered plaintiffs and other members of their class, thereby preventing the exercise of their right of free speech and assembly under the First and Fourteenth Amendments.

VII.

(7.1) Defendant Rangers admit that at times material to this suit a certain newspaper known as "La Verdad" has been published and in some manner distributed in Rio Grande City. Defendant Rangers neither admit nor deny that La Verdad was published by private parties. Defendant Rangers neither admit nor deny that La Verdad attacked and criticized plaintiff Union, its leaders, programs and sympathizers. Defendant Rangers neither admit nor deny that this publication has been regularly and systematically distributed to the public in Rio Grande City through and from the office of the Sheriff of Starr County.

(7.2) Defendant Rangers neither admit nor deny that member Nelson was engaged in peaceful picketing at the Roma international bridge on or about June 2, 1966. Defendant Rangers neither admit nor deny that Raul Pena arrested Nelson and caused him to be incarcerated in the Starr County jail for four hours without charge. Defendant Rangers neither admit or deny that someone designated in Plaintiffs' Amended Complaint as "co-conspirator Nye" then sought to intimidate Nelson by interrogation.

(7.3) Defendant Rangers neither admit nor deny that on or about October 12, 1966, Union members were peacefully picketing on United States Highway 83 adjacent to Rancho Grande Farms, appealing to employees thereof to make common cause with the Union. Defendant Rangers neither admit nor deny that member Chandler was sitting in a parked car near the pickets. Defendant Rangers neither admit nor deny that Defendant Raul Pena arrived with several deputy sheriffs. Defendant Rangers neither admit nor deny that the deputies drove their car between

the pickets and the workers, disembarked, and began shouting to the employees of Rancho Grande Farms in Spanish. Defendant Rangers neither admit nor deny that member Chandler approached the deputies and asked why they were there, and thereupon arrested Chandler and charged him with the use of loud and vociferous language calculated to disturb the inhabitants of Highway 83 in violation of Texas Penal Code, Article 474.

(7.4.) Defendant Rangers neither admit nor deny that on or about October 24, 1966, Union's President Arredondo was among a group of persons who had been arrested at the Roma international bridge and taken under arrest to the office of the Sheriff of Starr County in Rio Grande City. Defendant Rangers neither admit nor deny that Arredondo joined with others in chanting "viva la huelga" (long live the strike). Defendant Rangers neither admit nor deny that Deputy Sheriff Ellert physically struck Arredondo and threatened him with a loaded and cocked pistol and told Arredondo not to utter those words in the courthouse again.

(7.5) Defendant Rangers neither admit nor deny that on or about November 3, 1966, members of the Union engaged in picketing against the packing sheds of La Casita Farms situated near Highway 83 near Rio Grande City or that on said occasion said picketing took place on or across the railroad tracks of the Missouri Pacific Railroad. In the alternative Defendant Rangers plead that if there was any such picketing of the Missouri Pacific Railroad, peaceful or otherwise, that such constituted illegal picketing activity. Defendant Rangers neither admit nor deny that Defendant Roberto C. Pena filed complaint against Irene Chandler, Stephen Lee Holton, Reynaldo de la Cruz, Baldemar Diaz, Tony Orendein, Domingo Arredondo, Ismael Dias, Agustin

Serratos, Magdaleno Dimas, and Guillermo de la Cruz, charging them with violation of Article 5154f, the Texas Secondary Picketing Statute. Defendant Rangers deny that there is any such person as co-conspirator Nye. Defendant Rangers neither admit nor deny that County Attorney Nye filed an information against each of the persons heretofore named in this paragraph. Defendant Rangers admit that any warrants of arrest issued on November 9, 1966, pursuant to the aforesaid complaints and information (if any such) as were delivered to them were executed by the Defendant Rangers. Defendant Rangers deny that Article 5154f had been declared unconstitutional by the Supreme Court of Texas. Defendant Rangers further specially plead that if other defendants who are in possession of the necessary information have admitted that the complaints and/or informations referred to above were filed by the persons alleged to have filed them (and since such matters appear of record) Defendant Rangers will then admit the same.

(7.6) Defendant Rangers neither admit nor deny that Zoila Ozuna was standing in front of a stopped bus near the entrance to La Casita Farms on November 7, 1966, or that Defendant Jim Rochester boarded the said bus and angrily started it in motion. Defendant Rangers neither admit nor deny that said bus struck Zoila Ozuna. Defendant Rangers admit that pursuant to some verbal complaint of an incident similar to that related heretofore that an investigation was undertaken by the Texas Rangers but that they did not conclude to file any charges on account of said incident. Defendant Rangers deny that this was in sharp contrast to any zeal they may have displayed in enforcing the law where the Union and its sympathizers had indulged in some violation of the law in their presence.

(7.7) Defendant Rangers neither admit nor deny that on or about November 28, 1966, a rally was held on the grounds of the Starr County Courthouse and that at that time Defendant Raul Pena and other deputy sheriffs under his direction removed banners and flags that may or may not have been displayed on the courthouse property.

(7.8) Defendant Rangers neither admit nor deny that on or about December 18, 1966, a caravan of Union supporters bearing food and clothing arrived in Rio Grande City. Defendant Rangers neither admit nor deny that Plaintiff Dimas undertook to direct traffic at the intersection of U. S. Highway 83 and Farm Road 775. Defendant Rangers neither admit nor deny that on this occasion, Defendant Roberto Pena struck Dimas with his car.

(7.9) Defendant Rangers neither admit nor deny that on or about December 28, 1966, members of the Union were picketing peacefully near the main entrance to La Casita Farms. Defendant Rangers neither admit nor deny that Defendant Roberto Pena arrested Librado de la Cruz and charged him with assault on one Manuel Balli. Defendant Rangers again deny that there is any such person as co-conspirator Nye. Defendant Rangers neither admit nor deny that de la Cruz was charged with attempting to prevent Balli from engaging in his vocation. Defendant Rangers neither admit nor deny that Roberto Pena arrested Pedro Dimas, Maximiliano Perez, Eva Medoza, and Matilde A. Garza and charged them with obstructing a public road in violation of Texas Penal Code, Article 784. Defendant Rangers neither admit nor deny that Roberto Pena arrested Pedro Dimas for interfering with the arrest of de la Cruz. Defendant Rangers neither admit nor deny that Roberto Pena arrested William L.

Chandler, Jr. for using loud and vociferous language in violation of Penal Code, Article 474. Defendant Rangers neither admit nor deny that the above described arrest and charges were a spurious, wholesale dispersal of peaceful picketing.

(7.10) Defendant Rangers neither admit nor deny that on or about December 29, 1966, Union members Reynaldo de la Cruz and Pedro Dimas were in the offices of the Union in Rio Grande City wearing small tin badges of the type found as prizes in boxes of "cracker jacks." Defendant Rangers neither admit nor deny that Defendant Raul Pena and another deputy sheriff arrested them and caused them to be jailed, charging them with impersonating an officer in violation of Texas Penal Code, Article 429.

(7.11) Defendant Rangers neither admit nor deny that on or about January 26, 1967, five members of the Union, to-wit: Benito Rodriguez, Librado de la Cruz, Reynaldo de la Cruz, Benjamin R. Luna, Jr. and Benjamin R. Luna, Sr. were peacefully gathered on the banks of the Rio Grande River and were engaged in peaceful persuasion directed toward employees of the Trophy Farms to make common cause with the Union. Defendant Rangers neither admit nor deny that Defendant Roberto Pena and other deputies arrested all of them and charged them with use of abusive language in violation of Penal Code, Article 482. Defendant Rangers neither admit nor deny that the officers confiscated the loud speaker these people had with them.

(7.12) Defendant Rangers neither admit nor deny that on or about January 26, 1967, about 7:00 p.m., Plaintiff Padilla and Union member Rev. James Drake engaged in prayer outside the Starr County Courthouse on the

Rangers neither admit nor premises thereof. Defendant caused the said Drake and deny that Defendant Raul Penal assembly in violation of Padilla to be arrested for unlawf-

Penal Code, Articles 439 and 440. Defendant neither admit nor deny that

(7.13) Defendant Rangers neither Union members, member Orendein and three who were Roman Catholic together with five sympathizers bled on certain private priests, were peacefully asserBazan with the permission property owned by one Thomas ebruary 1, 1967, and that of the said Bazan, on or about lperty by traversing a road they went to the said private prcasita Farms, which road is between that property and La Cas a public access road to customarily used by the publicRangers neither admit nor the Bazan property. Defendant up engaged in peacefully deny that after arrival the groa Casita fields to make appealing to workers in the Defendant Rangers neither common cause with the Union. Roberto Pena and Defend-admit nor deny that Defendant er, caused the arrest of all ant Jim Rochester, acting togetl with disturbing the peace of said persons and charged then Article 474. in violation of Texas Penal Code

(7.14) Defendant Rangers neither admit nor deny that on February 1, 1967, Plaintiff Rodriguez was walking along the road between certain property owned by Thomas Bazan and the property of La Casita Farms. Defendant Rangers neither admit nor deny that Defendant James Rochester pursued the said Rodriguez and fired a pistol at Rodriguez. Defendant Rangers neither admit nor deny that Defendant Rochester jailed Rodriguez and caused him to be charged with disturbing the peace in violation of Texas Penal Code, Article 474.

(7.15) Defendant Rangers neither admit nor deny any of the actions alleged to have taken place on April 13,

1967, with regard to any election held with the National Labor Relations Board.

(7.16) Defendant Rangers deny that on or about May 11, 1967, Union member Ismael Diaz and others were engaged in peaceful picketing at the Roma international bridge. Defendant Rangers neither admit nor deny the reason these people entered a car or that they were going to the international bridge at Rio Grande City. Defendant Rangers admit that the international bridge at Rio Grande City would be open to traffic at 8:00 a.m. on the date in question. Defendant Allee admits that he arrested Diaz and charged him with driving without a license. Defendant Allee denies that his purpose in arresting Diaz was to interfere with any prospective lawful activity to take place at Rio Grande City. Defendant Rangers deny that Union members and sympathizers were peacefully picketing on a public road without blocking traffic on May 11, 1967. Defendant Van Cleve denies that he physically pushed Plaintiff Lopez and others except insofar as physical contact may have been necessitated pursuant to his duties in preserving the peace. Defendant Allee denies that he told Union members they should return to work and abandon their strike but pleads affirmatively that he told the people with whom he was confronted that they should go back to work and quit disturbing the peace. Defendant Rangers neither admit nor deny that Plaintiff Lopez attempted to file charges against Defendant Van Cleve, but admits that no such charges have been filed.

(7.17) Defendant Rangers neither admit nor deny that on or about May 12, 1967, someone named Nelson went to the office of the Sheriff of Starr County to lodge a protest with appropriate enforcement officials against what he believed was partial conduct by the Defendant

Rangers near La Casita Farms. Defendant Rangers neither admit nor deny that some conversation took place between the said Nelson and Constable Manuel Benevides. Defendant Rangers admit that the said Benevides was at that time the elected constable in Starr County and they neither admit nor deny that he was also an employee of La Casita Farms at that time. Defendant Rangers neither admit nor deny that any such conversation between Nelson and Benevides concerned United States Senators or red-faced Rangers. Defendant Rangers admit that a charge was filed charging Nelson with seriously threatening the life of four named Texas Rangers or other unnamed Rangers. Defendant Rangers admit that a warrant was delivered to them for execution and that they arrested the said Nelson pursuant to said warrant. Defendant Rangers deny that they, or any of them, threatened and abused Nelson while the said Nelson was under arrest. Defendant Rangers deny that they knew that the charge against Nelson was a ruse. Defendant Rangers neither admit nor deny that Defendant Raul Pena and County Attorney Nye refused to allow Nelson to make bond or that they refused to accept a surety bond executed by one Joseph Guerra, or that they knew of any of the allegations concerning real property tax receipts.

(7.18) Defendant Rangers deny that on or about May 18, 1967, Plaintiffs' sympathizers, Reyes Alaniz, Pedro Mendez, Gustavo Diaz, Mario Vera, Guillermo de la Cruz, Donato Bayan, Rafael Trevino, Ramona Olivarez, Anita Rosa, Maria Guadalupe Saenz, Viviana Segonia, Elodia Valadez, Reynaldo de la Cruz, Severo Benevidez, Benito Rodriguez, Librado de la Cruz, Octavio de la Cruz, Pedro Lopez, Victor Lopez, Magdaleno Dimas, and Horacio P. Carillo were peacefully assembled near the entrance to Trophy Farms on U. S. Highway 83 for the purpose of

asking workers for such farm to make common cause with the Union. Defendant Rangers admit that they arrested the above and charged them with mass picketing in violation of Article 5154d, Revised Civil Statutes of Texas.

(7.19) Defendant Rangers admit that on or about May 25, 1967, Plaintiffs Padilla, Lopez and Union member Eugene Nelson were crossing a public street in Rio Grande City. Defendant Allee denies that he ordered Nelson into his car and later gave the same order to Padilla and Lopez. Defendant Allee affirmatively alleges that he requested Nelson, Padilla and Lopez to join him. Defendant Allee neither admits nor denies that two persons who approached him were representatives of an investigating committee of the United States Civil Rights Commission, but admits that two persons did approach his car and that he explained to them that he wanted the three men to help him investigate a report that someone was creating a disturbance under a railroad bridge. Defendant Allee then requested the men to follow him in their own car. Defendant Allee denies that he departed at such a high speed as to make it impossible for the three men to follow him but admits that they did not follow him.

(7.20) Defendant Rangers admit that on or about May 26, 1967, Octavis de la Cruz, Irene Chandler, Daria A. Vera, Mario Vera, Benjamin R. Lema, Librado de la Cruz, Cathy Lynch, F. F. Medrano, Kathy Baker, and Magdaleno Dimas were near the intersection of the Missouri Pacific Railroad tracks and Conway Street in Mission, Hidalgo County, Texas. Defendant Rangers deny that three or four persons engaged in peaceful picketing at that intersection. Defendant Rangers admit that all were arrested and charged with violation of Article 5154f, Revised Civil Statutes of Texas and bond set at Five Hundred Dollars

(\$500.00). Defendant Rangers deny that said arrests were accompanied by blows, pushes, shoves and menacing and threatening language, but that any force used was only such force as was reasonably necessary to effect the arrests and prevent a breach of the peace.

(7.21) Defendant Rangers admit that Union member Arredondo and two other people were walking along a road on the west periphery of La Casita Farms. Defendant Rangers admit that they were carrying picket signs and talking through a loud speaker to people working in the fields. Defendant Rangers neither admit nor deny what Defendant Rochester may have done in driving his pickup truck about his own property and playing a radio through his amplifier. Pursuant to a call, Defendant Allee arrived on the scene, shook hands with Jim Rochester, and arrested thirteen Union members and charged them with mass picketing in violation of Article 5154d, Revised Civil Statutes of Texas.

(7.22) Defendant Rangers admit that on or about June 1, 1967, Magdaleno Dimas and Benjamin Rodriguez were in a house in Rio Grande City. Defendant Rangers Allee and Dawson arrived at the house and observed Plaintiff Dimas (a known ex-convict) walking about armed. Pursuant to instructions from Justice of the Peace B. S. Lopez in the form of a warrant, Defendant Rangers Allee and Dawson arrested Dimas and Rodriguez. Defendant Rangers aver that the execution of the warrant required force for the entry of the house because Dimas and Rodriguez did not respond to lawful verbal instructions to surrender. Defendant Rangers further aver that such force as was used in arresting Dimas was only that force which appeared reasonably necessary to them at the time to effectuate said arrest, taking into account the character of the persons to

be arrested and the type of resistance they offered to said arrest. Defendant Rangers denied that there was any striking or injuring by fists or feet. Defendant Rangers admit that Dimas and Rodriguez were charged with disturbing the peace in violation of Article 474, Texas Penal Code.

(7.23) Defendant Rangers admit that on or about June 1, 1967, Cathy Lynch, Elida Garcia, Librado de la Cruz and Reynaldo de la Cruz were in Mission, Hidalgo County, Texas, near the intersection of the Missouri Pacific Railroad tracks and Conway street. Defendant Rangers deny that plaintiffs had peaceably assembled at said location for the purpose of peacefully advertising the dispute between plaintiffs and the growers in Rio Grande City. Defendant Rangers admit that they arrested all four plaintiffs and charged them with violation of Article 5154f, Revised Civil Statutes of Texas.

In all of the sub-paragraphs above forming full paragraph VII, Defendant Rangers have neither admitted nor denied the filing of several complaints and the making of several arrests because of lack of knowledge thereof. Wherever such arrests or complaints are admitted by other defendants in this lawsuit and appear of record in any of the county courthouses in any of the counties involved in this lawsuit, Defendant Rangers will admit such arrests and/or complaints but without admitting any of the surrounding circumstances which plaintiffs may have alleged in their complaint.

VIII.

(a) Defendant Rangers deny that they have used certain statutes of the State of Texas for the purpose of jailing,

molesting, interfering with and frustrating plaintiffs in the exercise of their constitutional rights.

(b) Defendant Rangers deny that they have many times publicly announced that they will continue to make arrests, charges and prosecutions under the said statutes except insofar as they have frequently stated that they will continue to carry out their duties in law enforcement and that if such duties included the making of arrests and the filing of charges that they would not hesitate to do so. Defendant Rangers deny that such announcements of intention to carry out fair and impartial law enforcement can be calculated to chill the willingness of people to exercise their First Amendment rights of free speech, assembly, association and petition for redress of grievances.

(c) In addition to denying the facial unconstitutionality of the statutes in question in this lawsuit Defendant Rangers further deny that they have engaged in selective enforcement of said statutes except insofar as such enforcement is selective in that those who make common cause with plaintiffs have selected these statutes as the ones which they will violate.

(d) Defendant Rangers deny that they have utilized any statutes for the purpose of arrest and prosecution when they knew there was no evidence to support a conviction. Defendant Rangers aver that any fear and danger of arrest and prospect of interminable court litigation can only be charged to those who intend to willfully violate the law and thereby force Defendant Rangers and others to arrest them.

IX.

Defendant Rangers deny that they have purposefully entered into a scheme or plan of concerted and joint action with other persons to subject plaintiffs to the deprivation of their rights, privileges and immunities secured to them by the Constitution and the laws of the United States.

(a) Defendant Rangers deny that Article 5154d of the Revised Civil Statutes of Texas is unconstitutional for any of the reasons set forth by plaintiffs.

(b) Defendant Rangers deny that Article 5154f of the Revised Civil Statutes of Texas is unconstitutional for any of the reasons set forth by plaintiffs.

(c) Defendant Rangers deny that Articles 439 and 449 of the Penal Code of the State of Texas are unconstitutional for any of the reasons set forth by plaintiffs.

(d) Defendant Rangers deny that Article 474 of the Penal Code of the State of Texas is unconstitutional for any of the reasons set forth by plaintiffs.

(e) Defendant Rangers deny that Article 482 of the Texas Penal Code is unconstitutional for any of the reasons set forth by plaintiffs.

(f) Defendant Rangers deny that Article 784 of the Penal Code of the State of Texas is unconstitutional for any of the reasons set forth by plaintiffs.

X.

Defendant Rangers deny that they have denied plaintiffs of their right of free expression and speech granted by the First and Fourteenth Amendments of the United States Constitution. Defendant Rangers deny that they have unlawfully threatened, intimidated and coerced members of the press, who were attempting to report the activities of the plaintiffs and the defendants. Defendant Rangers deny that they have acted with the purpose of preventing the members of the press from reporting things that they observed.

XI.

Defendant Rangers deny that they have indulged in any acts or conducts in reckless and wanton disregard of the rights and welfare of any citizens.

XII.

(a) Defendant Rangers deny that plaintiffs have at all times engaged, or sought to engage, in peaceful and lawful exercise of their right to free speech and assembly.

(b) Defendant Rangers have no way of knowing whether or not plaintiffs desire to continue to exercise their rights, privileges, and immunities, including the right to peacefully picket and advertise their lawful cause.

(c) Defendant Rangers deny that they threatened to continue to deprive the plaintiffs of any rights, privileges and immunities by any means.

WHEREFORE, PREMISES CONSIDERED, Defendant Rangers pray the court that plaintiffs take nothing by their suit, that said cause of action be dismissed, and that plaintiffs be sent hence without day, and of this they put themselves upon the country.

Respectfully submitted,

**CRAWFORD C. MARTIN
Attorney General of Texas**

**R. L. LATTIMORE
Assistant Attorney General**

**ALLO CROW
Assistant Attorney General**

**LONNY ZWIENER
Assistant Attorney General**

**GILBERT J. PENA
Assistant Attorney General**

**HOWARD M. FENDER
Assistant Attorney General**

**ATTORNEYS FOR DEFENDANTS
BOX "R" CAPITOL STATION
AUSTIN, TEXAS 78711**

CERTIFICATE OF SERVICE

I, Howard M. Fender, Assistant Attorney General of Texas, do hereby certify that a copy of the above and foregoing Amended Answer (As to Certain of the Defendants) has been deposited in the United States Mail, postage prepaid, to Dixie and Schulman, Suite 505 Scanlan Building, Main at Preston, Houston, Texas 77002; Jerome Cohen, 1511 12th Avenue, Delano California (via air mail); and, Doran Williams, P. O. Box 54, Rio Grande City, Texas, Attorneys for Plaintiffs, this the 7th day of February, 1968.

HOWARD M. FENDER

[fol.1]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FRANCISCO MEDRANO, ET AL]

VS.]

CIVIL ACTION NO. 67-B-36

A. Y. ALLEE, ET AL]

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

COUNSEL FOR PLAINTIFFS:

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GEORGE DIXIE

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COUNSEL FOR DEFENDANTS:

Attorney General of Texas
BY: MR. HAWTHORNE PHILLIPS, MR. ALLO B. CROW,
and MR. GILBERT PENA

Mr. Frank R. Nye, Jr.
Courthouse, Rio Grande City, Texas

Mr. Luther E. Jones, Jr.
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Messrs. Atlas, Schwarz, Gurwitz & Bland
P. O. Drawer 1118, McAllen, Texas
BY: MR. GARY GURWITZ

BE IT REMEMBERED that upon the the trial of the above styled cause, begun on the 11th day of June, A.D. 1968, before His Honors John R. Brown, Reynaldo G. Garza and Woodrow Seals, sitting as a Special Three-Judge Court, the following proceedings were had:

[fols.2-11] * * *

[fol.12] MR. DIXIE:

The second statute is the Texas Mass Picketing Statute. The Texas Mass Picketing Statute provides that any time more than two persons congregate within the presence of each other as pickets that they violate that statute. Pickets are broadly defined to include everybody in the vicinity who is there to observe or to induce or take party in any way. We claim that that statute is unconstitutional in holding that in every situation two and only two every 50 feet is all that will be allowed. Now there is one point here that I want to underscore. In my pretrial memorandum I brought out that this statute is also discriminatory. The claim of discrimination arises from the fact that if a labor organization places those pickets out there on its behalf, then the statute is violated, but if a group of people go out there and do exactly the same thing but are not there on behalf of any organization, the statute is not violated. There is no acceptable classification distinction which will support that particular division. In Short, if a group of housewives or a group of Negroes get out and picket about prices or [fol.13] race discrimination, they are innocent. If a labor organization does it, it is guilty. And now I underscore that point because my pleadings are less than ideal to raise that point but I did raise it in my memoranda which has been before the Court for more than a month and in the hands of other Counsel.

* * * * *

[fols.14-21] * * *

[fol.22] * * * * *

The median family income for a Starr County family was \$1700 a year compared to the median family income for Texas as a whole which was \$4,884. a year. Of the 3,680 families in Starr County, 1,005 had an income of less than a thousand dollars a year.

JUDGE GARZA: How many families in Starr County?

MR. DIXIE: 3,680 families.

2,484 families, about two-thirds of the number of family units, makes less than \$3,000. The median educational attainment of Starr County residents of more than 25 years old was 4.9 years. The median for Texas as a whole is 10.9 years in school. About 35% of all housing in Starr County is classified as either deteriorating or delapidated. More than one-half of the houses have neither bathtub nor shower.

JUDGE BROWN: Radios and television?

MR. DIXIE: More than half had no flush [fol.23] toilets. More than half have no piped water supply, either inside or outside the house.

* * * * *

[fol.24] * * * * *

MR. PHILLIPS: We would stipulate that that is low income County and we grant that they have every right under the sun to organize those workers if they desire.

* * * * *

[fols.25-77] * * *

[fol.78] * * * * *

MR. DIXIE: Now then on the complaint for abusive language this occasion, 7.11E, shows Federico Pena against Librado language that was filed by complaint filed by Augustin Lopez de la Cruz. 7.11F shows a Cruz. The next two is charges Lopez against Reynaldo de la against Benito Rodriguez, alleged filed by Roberto Pena, both Federico Pena in one case alleging abusive language toward another case. and Augustin Lopez, Jr., in

* * * * *

[fol.79] * * * * *

(Dixie's summary of Raul Pena's testimony).

. . . that he did file on then na's testimony).
that this was the grounds—that for unlawful assembly, and disturbing the night custodian environment. It gives the name that is that [fol.80] he was in the last answer on the seaman's right to a peaceful "The conduct of theirs which of the night custodian. And was their refusal to leave whecond page he testifies that, others complied with the request caused me to arrest them
* * * * * n I asked them to do so. The
est that they leave."

[fols.81-82] * * *

[fol.83] * * * * *

(Dixie's summary of Roberto Pena's testimony).

. . . . In his testimony about o Pena's testimony).
Number 29 that he saw them—
were on La Casita rather than
at this Roberto Pena says in
—when he first saw them they
—7 on Bazan property, and the

reason he arrested them is because they were using loud and vociferous language directed towards—

JUDGE BROWN: The priests were using this kind of language? He ties this in with the [fol.84] priests now?

MR. DIXIE: Yes, he did. They were using loud and vociferous language directed towards 50 or 60 workers working in the La Casita field. Such language consisting of statements in Spanish to the effect that the workers were slaves, that they should quit working and that if they did not quit working the Union would force them to quit.

[fols.85-121] * * *

[fol.122] * * * * *

TESTIMONY of EUGENE NELSON by MR. DIXIE:

Q State what they said to you.

Q Well, for one thing the driver, whose name I don't recall, turned around and pointed his finger in my face and said, "You have lived a charming life in Starr County long enough." And Jack Van Cleve also turned around and also pointed his finger in my face and said, "You better not go too near the river or the Texas Rangers will see to it that you end up floating down the Rio Grande."

[fols.123-134] * * *

[fol.135]

MR. DIXIE: . . . As to paragraph 7T of the complaint, the parties stipulate that on and immediately following May 18, 1967, Trophy Farms Number 2 and Number 3

farmed about 1,011 acres of land and employed about 200 employees. Highway 83 immediately to the north of Trophy Farms runs east and west. Its a two-lane highway with paved strips on each side for about two-thirds of a lane. The south shoulder of the road which is unpaved, graveled, in part is approximately 42 feet in width. There's a post at the east and another at the west side of the entrances of Trophy Farms, to show Plaintiffs' Exhibit 7T(A), which are marked A and B respectively. Actually 7T has escaped us somewhere. But those two telephone posts are the ones that I showed the Court on one side and the other of the entrance. The entrance to Trophy Farms is a two-pronged roads which two-prongs leaves a grassy island in the middle, as shown in 7.18 Exhibit. These prongs converge into a single road about 100 feet to the south of the shoulder of the road.

[fols.136-148] * * *

[fol.149] * * * * *

MR. DIXIE:

The defendant Allee testified pertaining to this that on or about May 31 he did see Arredondo and a group of sympathizers on the road on the west periphery of La Casita, that he did see Jim Rochester and he did arrest Arredondo and the persons with him, that he did not file the charges, that either [fol.150] Jim or Ray Rochester filed the charges. And as to the reason he arrested them, he answered 108 that they were gathered together in a group and picketing in a manner forbidden by Article 5154d. "Since they did this in my sight and presence, I arrested them without a warrant."

[fols.151-163] * * *

[fol.164] * * * * *

MR. DIXIE: Let me restate it. Jim Drake and Gilbert Padilla were arrested and charged with unlawful assembly on account of the activities of theirs on the southside of the Starr County courthouse. This stipulation says that on the same southside of the Starr County courthouse in August of 1966 there were two public dances held. Now we further stipulate that on the northside of the courthouse since these events took place there have been more dances held. We further stipulate that for many years past on the northside of the courthouse but at some distance away the authorities have permitted the political parties to erect tents for the purpose of soliciting support from voters who come to vote. That those tents stay up there, I suppose, on election days.

* * * * *

[fol.165] * * *

[fol.166] * * * * *

MR. DIXIE: Well, right up here there is stairs leading up to the lobby of the courthouse and my information was that the orchestra sat in the stairs and that the people danced around here. Is that correct?

[fol.167]

MR. NYE: I believe that's right, yes sir, because the stairs are rather steep and there's eight or ten steps, something like that.

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[fols.168-185] * * *

[fol.186] * * * * *

TESTIMONY of ESTHER GUEVARA KRUEGER By MR. DIXIE:

Q All right. When you got to the Justice Court were you taken before the Justice of the Peace?

A Yes sir.

Q Did he tell you what you were charged with?

A Yes sir. He said we were being charged with unlawful assembly.

* * * * *

[fols.187-201] * * *

[fol.202] * * * * *

TESTIMONY of EDGAR ALLEN KRUEGER By MR. DIXIE:

Q Were you told what you were charged with?

A Yes sir.

Q What were you told?

A That we were charged with unlawful assembly.

Q And your bond was put up by the Church?

A Indirectly. By a member of the Church. As a matter of fact, the president of the Texas Council of Churches.

Q How much was your bond?

A \$500 per person for a number of persons.

Q The president of your church put up that \$500 cash bond for all of the arrestees that night?

A Yes sir, as I understand it that's true.

Q Now then, I'm going to get away from that date and come back to a much earlier period of time. On the morning of May 11th, 1967, were you at the Roma Bridge in the company of other Union members?

A Yes sir.

Q What were they doing?

[fol.203]

A They were holding up a large flag at that time and also on the U. S. side of the border they were watching to see if any of the green carders were going to come across the river.

Q Were there any green carders coming across?

A None that I observed.

Q Was there any traffic at all?

A No, it seemed to be a standstill.

Q Did you receive any information that there was a picket line or a picket flag on the Mexican side of the border that particular morning?

A Yes sir, yes sir.

Q Now then, it has been established here that a group along with Ismael Diaz were at that bridge and that they left there headed for the Camargo Bridge that morning. Were you in the car that day?

A Yes sir.

Q Now then, were you stopped by a Ranger?

A Yes sir.

Q Before you were stopped by a Ranger state whether or not your car was speeding or violating any other traffic law as far as you knew?

A No sir. It was an older car. About a '59 Ford, I believe.

[fols.204-255] ***

[fol.256] *****

DOMINGO ARREDONDO,
having been first duly sworn on oath, testified as follows:

DIRECT EXAMINATION

BY MR. DIXIE:

Q Your full name is Domingo Arredondo?

A Yes sir.

JUDGE BROWN: Were you sworn?

Q BY MR. DIXIE: Have you been sworn?

A Yes sir.

Q How old a man are you?

A 32.

[fol.257]

Q How much?

A 32.

Q 32. Are you the president of the Farm Workers Union in Rio Grande City?

A Yes sir.

[fols.258-264] ***

[fol.265] *****

A No, from the heat. I'm sorry. From the heat. And one lady or one women and another man and me kept going in front of all the rest of our peoples or our pickets and the people who had pulled their cars under the shade of the tree and they put their signs inside the cars and sat inside the cars themselves, too, except this boy Moreno, I think is his last name, and Cathy Lynch and I, we were walking along the road. And I think it is Moreno, if I recall his name—he was talking to the workers and Cathy Lynch was following him quite a good distance away from him, and then I was so far from Cathy Lynch behind, I saw Mr. Ray Rochester's car came inside the La Casita Farms property, came along where we was walking, and then he stop between Moreno and me inside the property of La Casita Farms, and at that time about two Texas Rangers'

cars drove in there, and I believe, if I recall, two Starr County officers, deputy sheriff cars, came in. Captain A. Y. Allee and a Sergeant drove on the County road just beside us and then Captain A. Y. Allee got up from his car and also the Sergeant and shook hands with Mr. Rochester, and at that time Mr. Rochester [fol.266] pull out of La Casita Farms property and on the County road and took off and Mr. Rochester put Mr. Moreno in his car—

JUDGE GARZA: Rochester?

A No, Captain A. Y. Allee. He put—

Q BY MR. DIXIE: Not Rochester, Captain A. Y. Allee?

A No, He put—Allee—he put him under arrest. And we got in the cars and as we were coming out the County road the Sergeant asked how about these only people sittin around the car and under the shade, so Captain Allee said, “Well, put them under arrest for mass picketing.” While they was sitting inside and around the cars.

Q How far away from you were those cars?

A Oh, well, it seems to me like they were pretty close to 200 or 250 feet away from us, if I recall.

Q Were they on the road?

A On the County road, yes, under a tree.

Q Under a tree?

A Yes sir.

Q By the side of the County road?

A Yes sir.

Q And they weren't doing anything at that time except sitting around the cars?

A Yes sir.

[fols.267-272] * * *

[fol.273] * * * * *

CROSS EXAMINATION

BY MR. PHILLIPS:

Q When did you first join the Union?

A Oh, I don't recall exactly but it was in May, 1966. It must have been on the 28th or something like that.

Q You were with it from the time the strike first started?

A Yes sir, the strike took place on June 1st, 1966.

Q And you continued being in strike until June '67 roughly?

A I don't recall exactly when we received those complaints and plaintiffs and they start making us run out of money to bail people out of jail, so I'm sorry I can't tell you, not right now. Injunctions from farmers, so we couldn't get anywhere or make any more picket lines.

[fol.274]

Q Now you continued, though, up until that time?

A Yes sir, continued—we had the injunctions—

Q Up until the injunction in '67?

A Yes.

Q Now how many times have you been arrested?

A Oh, probably—ever since we started?

A Yes.

A Oh, from anything around three to five times, I believe.

Q Three to five times?

A Yes sir.

Q Now how many times have you been out picketing?

A How many times?

Q Yes.

Q Well, as long as we were not in jail we were always picketing.

Q That was everyday?

A Beg pardon me?

Q That was everyday?

A Like I said, when we were not in jail we would go out picketing.

Q But you were arrested three to five times?

A Maybe.

Q Now on October 24th I believe is when it was alleged that you yelled viva la huelga at the [fol.275] courthouse?

A That's correct.

Q Now you were under arrest at that time?

A Yes sir.

Q Why had you been arrested?

A That's when we had an incident on the bridge, International Bridge in Roma, Texas.

Q What were you doing on the bridge?

A Well, we were demonstrating on the bridge.

Q Were you blocking the bridge?

A Not exactly. But right after they drag Eugene Nelson we just lay on the bridge or sit on the bridge.

Q You laid down or sat on the bridge?

A Sit on the bridge, yes sir.

Q And you were arrested for lying or sitting on the bridge?

A Obstructing a public road or bridge, whichever they want to call it.

Q Who arrested you?

A Mr. Frank Randall Nye went along with the deputy sheriff's of Starr County and he start pointing all of us under arrest.

Q Now, did you—

JUDGE GARZA: Were you sitting on the [fol.276] bridge at the time in the middle of the bridge?

A When they arrived, not exactly. We were standing on the bridge.

JUDGE GARZA: But in the middle of the bridge?

A We were in a line.

JUDGE GARZA: In other words, if a car tried to get across the bridge it couldn't have?

A No sir.

JUDGE GARZA: Without running over you?

A Yes.

JUDGE BROWN: When did you change from just standing around to putting your bodies down on the road?

A After they put Eugene Nelson—they drag him to the car. Put him under arrest and he sit down, then they drag him to the car handcuffed.

JUDGE BROWN: What did they say when they took Mr. Nelson, if anything? Did they say anything, the officers?

A Such what? Excuse me.

JUDGE BROWN: Well, I just asked did they say anything? What did they say you were [fol.277] doing is what we are trying to get at. Did you hear what the officers said Mr. Nelson was doing to cause him to be arrested?

A Blocking bridge, obstructing bridge.

JUDGE GARZA: Blocking bridge.

Q BY MR. PHILLIPS: Then did you all sit down?

A Yes sir.

Q And did they tell you to move? Did the officers tell you to move?

A They put us under arrest. Right after we sat down they put us under arrest.

Q Now then, isn't it true that they had to pick some of you up and carry you, that you wouldn't walk?

A I don't think they pick anybody. They drag them just like animals.

Q Did they give you opportunity to walk?

A What?

Q Did they give you the opportunity?

A Well, no, the way they treat Nelson we decided we wouldn't move. The way they treated our leader.

Q You decided you wouldn't move?

A No sir.

JUDGE GARZA: The question was did they ask you to get up?

[fol.278]

A They put us under arrest and said come on, come on, and they kept on—they were trying to handcuff all of us.

JUDGE BROWN: Trying to do what?

JUDGE GARZA: Handcuff.

A Handcuff.

Q BY MR. PHILLIPS: Were you trying to keep them from handcuffing you?

A Yes sir.

JUDGE BROWN: At this time were there any people in a bus or truck who were workers who might be coming across the bridge to go to work?

A There were several cars, different persons, workers, and I don't know. Maybe just people who were coming across the bridge.

JUDGE GARZA: Shoppers?

A Shop, yes sir.

Q BY MR. PHILLIPS: Now, this was several months after the strike began?

A Well, the strike took place on June 1st.

Q This was in October?

A Yes.

Q So up until that period of time how many times had you been arrested? Was that your first arrest?

[fol.279]

A Wait a minute, let me refresh my memory again. I believe that was my first arrest. I'm not pretty sure.

Q Now how many occasions did Reverend Krueger go out with you when you were picketing?

A Not exactly with me, sir.

Q What?

A Not exactly with me.

Q Well, how many times did you see him?

A Well, I couldn't tell you exactly how many times because he would come by maybe two or three days in the week, maybe less or maybe sometimes he wouldn't come around.

Q But did he come around fairly frequently?

A Beg pardon me?

Q Did he come around pretty often?

A Sir?

Q Did he come around pretty often?

A Well, I guess when he was around he would come over to Rio Grande City often.

Q Did he attend your meetings?

A On Friday night. That's when we had our meetings.

Q And did he attend them?

A Some of them. Not all of them.

Q Did you ever see him dressed in a garb that looked [fol.280] like a priest? Clothes that looked like a priest clothes?

A Well, what kind of priest?

Q Well, any kind.

JUDGE GARZA: With a Roman collar.

A Yes, on just one time.

Q BY MR. PHILLIPS: Well, now what did you all do on that occasion?

A Well, that's when we was—we weren't arrested on that occasion. That's when we were at the Solis property.

Q He had his collar—priest—

A I believe that's the time he had a collar.

Q Did he wear that type of dress all the time?

A He had his collar but not the cape or—I don't know what you call that—

Q Is that the only time you saw him dressed that way?

A Well, that's the time when it come to my attention the way he was dressed.

Q Well, did you see him later dressed that way?

A No sir.

Q That's the only occasion?

A Yes sir.

Q Now how many times did you use a loud-speaker?

A Well, I couldn't tell you exactly how many times.

[fol.281]

Q Quite a number?

A Like I said we would go out and picket and talk to the people when we were not in jail.

Q And were you using a loud-speaker?

A Sometimes we would and sometimes we wouldn't.

Q Well, now why were you using a loud-speaker?

A Well, the reason we use it is because sometimes the wind was pretty strong and they could—you can't hardly hear—excuse me, you can't hardly hear from here to where you are and its not the noise in here, and that's the reason we have to use a loud-speaker.

Q Was this a mechanical amplifier when you are talking about a loud-speaker? One that had batteries or something in it that made it louder?

A Yes sir, we had the car battery—connected with the car battery.

Q And what were you telling the workers in the field?

A Well, to join the strike or the Union, whichever it was, that it was for their own benefit, not to work so cheap any more. That it was the time for the Latin Americans to do something about—to start feeling free to do something.

Q Is that all you told them?

A Yes sir.

[fol.282]

Q You didn't call them any names?

A No sir, not that I remember.

Q You didn't call them scabs?

A No—scabs—well, esquirol is the word.

JUDGE BROWN: What did he call?

A Strike breakers.

JUDGE BROWN: What's this Spanish word for the record?

JUDGE GARZA: Esquirol, E S Q U I R O L.

JUDGE BROWN: What does it mean?

A Scab.

JUDGE GARZA: Scab.

Q BY MR. PHILLIPS: Did you call them that?

A Well, its a strike breaker. Don't be scabs, don't be scabs.

* * * * *

[fol.283] * * *

[fol.284] * * * * *

CROSS EXAMINATION

BY MR. NYE:

Q Domingo, what time did you go to the International Bridge that day that you were arrested?

[fol.285]

A Oh, it must have been around pretty close to 4:30 or 5:00 o'clock in the morning.

Q And at that time you stopped the traffic, did you not?

A Well, there were no traffic right at the time we arrived at the bridge.

Q Whatever traffic there was, however, you stopped it as it began to cross?

A Well, the traffic start taking place around 5:30-5:15 and 5:30. That's when the traffic start coming across the bridge.

Q Now the International bridge there at Roma was completely blocked by you people, was it not?

A Well, not exactly at the beginning because until we start seeing cars coming by and we will ask them, "Where are you going to work," and they will say, "Well, I'm going to Saldana, I'm going to work here on this house, I'm a carpenter, I'm a painter," we would let them go by.

Q There were a number of those people, though, that you blocked? Say by 6:00 o'clock-by 8:00 o'clock in the

morning, the bridge was completely blocked? Right?

A Yes sir.

Q Right. And then I came over and asked you to [fol.286] please move your people, isn't that right?

A You didn't ask me.

Q Well, you heard me ask somebody whoever was your leader?

A Yes sir.

Q Did you hear that?

A Yes sir.

Q And I asked you on several occasions that I thought you were doing wrong by blocking that bridge? Right?

A I don't remember hearing you say that because you know since people was so crowded in there.

Q Well, just answer my question. You do remember me asking if you would please move?

A I think I remember that you said—

Q Just answer my question.

A If you don't move, we will arrest you.

Q All right. At that time is when I asked the officers to come over there and one of the officers put—I think Mr.

Nelson was the first one that was put under arrest?

A Right.

Q And at that time you all were lying on the bridge?

A Yes sir.

Q You had your arms—

[fol.287]

A Cross one with each other.

Q Holding each other?

A Yes sir.

Q And made a complete cordon across the bridge?

A Yes.

Q And there was traffic backed up how far?

A Oh, I don't know exactly how long.

Q You didn't look at that direction?

A No, I never looked that direction. I was just—

Q Well, there was 40 or 50 cars maybe?

A I doubt it.

Q 20?

A No. I don't think there—I don't think that—not even 15 cars, I don't think, can fit from the middle of the bridge to—

Q At any rate, no one could pass?

A Beg pardon?

Q No one could pass?

A No, sir.

JUDGE BROWN: You got it blocked now.

JUDGE GARZA: Just leave it alone.

[fols.288-335] ***

[fol.336] *****

TESTIMONY of WILLIAM CHANDLER By MR. DIXIE:

Now then, we have offered in evidence before the Court copy of a document which we have labeled—which we have orally labeled 7.24—its not a paragraph in the complaint—just merely another secondary picketing and mass picketing charge that was filed on account of the events of June 4th. I now offer in evidence the testimony of William Chandler on Page 183, please, Counsel, Line 20: (Reading)—

Q Now this business happened on June 1st. Had you and your wife been arrested before that, immediately before that, for mass picketing?

A Yes.

Q When did that happen?

A In the afternoon of May 31st my wife and Horacio Carrillo were picketing at the east end of the staging area by the railroad tracks in Rio Grande City.

Q They were picketing against La Casita sheds at that time?

A Yes, that is correct.

Q Now, were there any other pickets around your wife [fol.337] and Horacio Carrillo?

A No, not at that location, other than myself. I was about a hundred and fifty feet away from the two pickets.

Q What had you done there?

A I had brought Coca-Cola for both of them. I was waiting for them to finish drinking the Cokes so that I might take the bottle back.

Q Why were you concerned with taking the bottle back?

A If they were left on the ground I was concerned about there might be a question of littering.

[fol.338] *****

A The next thing that happened, I noticed Captain Allee driving up the road and he came to a stop and

slammed on his brakes rather hard and made a cloud of dust and got out, and I said, "Hi" to him. He didn't say anything except an order to the other Rangers that "Run them all in." They then asked Allee, "You want him, too?" Pointing in my direction. And he said, "Yes." He then got back in his car and took off. They then called for Roberto Pena to come and provide transportation for those of us what were under arrest. Roberto showed up moments later and the two Rangers there ordered directly my wife and Mr. Carrillo to get in Mr. Pena's car. I then asked, since they hadn't told me anything, if I should go, too. They said, "Well, no. Why don't you go on about your business?" I said, "Okay." And I left after Mr. Pena left.

Q In other words, the Ranger failed to arrest you even after Captain Allee told him to?

A Yes, that is correct.

Q How far away from the two pickets were you standing at the time that Captain Allee gave the order [fol.339] to arrest you?

A I was standing about a hundred and fifty feet away from the two pickets.

Q Did you have a picket sign or anything in your hand?

A No, I didn't.

Q Were you doing anything at all except waiting for the Coke bottle?

A That's all I was doing.

MR. DIXIE: That finishes on Page 186 at Line 21.
Resuming on Page 188 at Line 7: (Reading)—

Q All right. The next day did you hear from this episode again?

A Yes. We were told to return at 9:00 o'clock in the morning and appear for arraignment before Judge Lopez' Court. This we did. We returned about 9:00 o'clock. About 9:30 Mr. Carrillo was brought and my wife and himself and myself were charged with secondary picketing—or mass picketing, excuse me, and direct boycotting. I was quite surprised since I had not been incarcerated at the time.

MR. DIXIE: That's all on Page 188. Then we had a colloquy between Mr. Nye and [fol.340] myself on Page 189 in which we established by agreement that these three people were charged—one complaint at mass picketing and also a complaint of secondary picketing. That's on Page 189, Lines 10 to 17.

[fol.341] *****

Q So why a minute ago did you say you were picketing La Casita? Actually you weren't, were you?

A Yes, because this was the nearest public access at this particular location.

Q To La Casita?

A To La Casita.

Q Well, you had had pickets right in front of their sheds everyday for a year, hadn't you?

A Yes.

Q Actually on La Casita property, hadn't you?

A I don't think that—I don't recall that anybody picketed on the La Casita Farm.

Q Well, I won't argue with you about whether it was La Casita property but, actually, you had pickets that were within 30 feet of the shed itself, did you not?

A Yes.

[fols.342-346] * * *

[fol.347] * * * * *

TESTIMONY of FRANCISCO MEDRANO By MR. DIXIE:

A As I was taking a picture of the Rangers coming in to get the girls, Captain Allee saw me taking pictures and he says, "Arrest that man. I don't want any pictures taken." And three Rangers jumped

[fol.348] * * *

[fol.349] as I remember. So I start taking picture of Captain Allee's struggling with Cathy Baker.

Q Then what happened to your camer?

A Then one Ranger came in, opened the door, and with his right hand hit me with my camera in my eyes and face and my nose, which was swollen for over a week afterward.

Q He pushed the camera in your face?

A Against. And then took the camera away.

Q All right. Then did the Rangers take you and others before a Justice of the Peace?

A Yes sir.

Q Where was the Justice of the Peace?

A This was in Edinburg, Texas. I don't know how many miles it is. It seems like its a long way off to Edinburg. A Justice of the Peace by the name of Benito Villarreal.

Q And did the Justice of the Peace arraign you before him? I mean did he tell you what you were charged with?

A He told me that I was charged for unlawful assembly or illegal assembly. Something like that.

[fols.350-368] ***

[fol.369] *****

MR. DIXIE: I will introduce the balance of the supplemental stipulation, and the only point that I have to call to the Court's attention about that is that we have stipulated that the employees of La Casita Farms come to

work from three primarily sources. One of them is they may live in the immediate neighborhood and they may walk to work. And second one is if they live in Starr County they usually gather at the La Casita shed down on the Highway 83 where they board company buses and they are taken by buses to the farm to do their work. A third source, the stipulation says, is that they would come over from Mexico and get on buses at the Roma Bridge, other bridges, and be taken by bus to work. Each bus carries about 30 employees more or less.

[fols.370-417] * * *

[fol.418] * * * * *

FRANK RANDALL NYE, JR.,
having been first duly sworn on oath, testified as follows:

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Please state your name?

A Frank Randall Nye, Jr.

Q And what is your occupation, Mr. Nye?

A I'm an attorney.

Q And do you hold any official position in Starr County?

A Yes sir, I'm County Attorney of Starr County.

[fol.419] * * * * *

Q Would you tell us a little bit of the events that led up to the first day of the picketing in June, I believe, 1st, 1966, the record will show?

* * * * *

[fol.420] * * * * *

A I was first advised about the fact that there appeared—that there was going to be some activity with respect to picketing et cetera when Mr. Eugene Nelson made various statements to the press, and it was a well-known fact in the community that picketing was to begin at a certain time which was June 1. At that time I noticed personally an influx of a number of people that had not been known in our County, that were evidently spearheading this movement. Mr. Eugene Nelson, Tony Orendain, William Chandler, Magdaleno Dimas and others.

[fol.421] * * * * *

MR. DIXIE: And another thing—I followed the Judge's intrusion—that Tony Orendain and Bill Chandler didn't come until months later, if you are talking now about June of 1966, I believe.

A That's right. I said June—when it was going to start on June 1, 1966. I at that time felt that the Texas Rangers should be called in because I didn't know what was going to happen. I was only concerned about seeing that the law was enforced in both directions. I can assure you that. And I called Captain Allee and told him that I understood that they were going to begin picketing on June 1 and [fol.422] asked him if it was possible to have a Ranger present. And he said, "Yes, I'll see if I can get one down there." And then I went to Austin, as I recall, or somewhere else. At any rate I wasn't present in Starr

County at that time and that's when an incident happened where I believe Eugene Nelson was arrested for blocking the railroad. That was the first incident with respect to Union activity that I recall that had anything to do with law enforcement officials.

All during this time there was—the picketing continued and it continued throughout the summer, as I recall. At that time—at some time during these first picketing days I discussed with Mr. Nelson the picketing statute that we had in Texas and gave him various Xerox copies of it. And then picketing continued for a long time without any incident.

And the next time that there was an incident was on October 12th, 1966. I think at that time Mr. Chandler was arrested for abusive language. And then we discussed the picketing statutes again, and things were quiet until there was the bridge incident on October 24th, 1966.

At that time is when I became quite concerned [fol.423] because this was International Bridge. It had been blocked. And I was called early in the morning. I got there about—I guess 7:00 or quarter of 7:00. Something like that. And these demonstrators had been there for quite some time. And I went out and tried to dissuade them from any further activity. However they never would disperse and traffic started getting piled up.

Meanwhile I felt that this matter could rise to greater proportions so I started calling in everyone that I knew. I called the Rangers, I called the Federal—United States District Attorney in Houston and talked with Mr. Susman and discussed the fact that this was an International Bridge, that if there was any possibility of assistance from

Federal authorities. I talked to the local Border Patrol—the Border Patrol Inspector, I think, in McAllen—and asked them if they could help us. I talked to the Attorney General's office in Austin and asked their help. And then we—we don't have a great library there in Rio Grande City so I asked Mr. Luther Jones if he could check out the law with respect to offenses.

And so after talking with them for a short period because we were, so to speak—we had to [fol.424] act obviously immediately—we found that statute on the blocking of the bridge and we just took action on it.

JUDGE BROWN: What statute is that? State statute?

A Yes sir, blocking of the bridge.

JUDGE BROWN: International or it doesn't state?

A It doesn't specify, no sir. Then things quieted down—

JUDGE BROWN: Let me ask a question in general interest. With respect to an act taking place on the bridge itself but on the American side of the International boundary, wherever it is, would that be within the jurisdiction of the State Courts of Texas or is that a Federal offense?

A I was hoping it would be a Federal offense, Judge, because we needed help but I was turned down by everyone. And I would say this: That we know it was in the United States because at one time when we approached this group that was blocking the bridge they

went into Mexico. There's a very definite line of demarcation. And the Mexican officers told them if they wouldn't get off they [fol.425] would take action.

Anyway, about 10:00 o'clock, why, some action was taken and they were—these people were taken into custody.

Then there wasn't—there was some isolated incidents. I would like to point out at this time, if the Court please, that there were about 15 instances where the law enforcement officials and the Union came to an impasse there. And this morning I thought this might be helpful to the Court. I drew up a little chart here just showing when these 15 instances were—the dates and the number of complaints and arrests that were taken, if the Court would like to see them.

JUDGE BROWN: This is from your own knowledge, too, isn't it?

A Yes sir, it is.

JUDGE BROWN: I think it would be helpful, if there is no objection. Is there any objection?

MR. DIXIE: May I see it?

MR. NYE: Surely.

A Because this all happened over a course of a year, Judge, and there is 15 incidents there that were—where there were complaints and arrests made.

[fol.426] * * * * *

A Then in December, January, we had, say, three or four incidents, and then In February there was one incident and then one in March. However by that time there was a great deal of activity. Picketing was continuing through this period of time. In some instances property and in some instances I had received complaints from different people. I thought that it was being picayunish in one instance to bring any action if they were within 20 feet or 30 feet. So we didn't take any action. At any [fol.427] rate, the situation in my mind later became electric some time in early May and we knew that the harvest season was about to begin and there had to be some evidences that indicated to me that something might happen. And Starr County is—I don't know exactly how many miles—square miles we have in it but its a rather large County. It some 50 or 60 miles wide by 30 or 40 in breadth. And we have only one incorporated City which is Roma and they only have local Marshall. And so I felt that our local law enforcement group was not large enough or equipped to handle something that might have happened.

I had been contacted on several occasions by merchants and individuals that were concerned about possible violence that might lead to bloodshed. And as a result of that—meanwhile I had continued—I called the FBI and asked them if they wanted to come in and investigate some of these matters. I talked again with Mr. Susman. I think I even discussed it with Mr. Lopez.

Meanwhile I had also called the Attorney General's department. This is intermittently over a period of six or seven months since May. And they would come down on occasion. The Attorney [fol.428] General's department had representative down there on several occasions and

they would counsel with us and go on back. Meanwhile the situation—I felt—needed further attention by the Rangers. So I had called Captain Allee on two or three different occasions, say, in early 1967, and he indicated that his Rangers were busy people and, "Well, maybe I can't send you one now but I'll send you one in four or five days." And that would have been too late for our purpose.

So I made a special trip to see Colonel Garrison and took our State Representative with us and asked him to go up there. And he knew the situation. So we went and visited with Colonel Garrison and that's when he assigned the Rangers to Starr County in this particular situation.

JUDGE BROWN: Now what is the date of this?

A May 10th, sir, 1967. Up until that time I had asked for one Ranger or two or three directly from Captain Allee.

JUDGE BROWN: Now, is there a substation of the Rangers in your area?

A In Crystal City—not Crystal City but in Carrizo Springs is where Captain Allee's office is, yes [fol.429] sir.

JUDGE BROWN: Call it District, I suppose.

A Yes sir. It's something like that.

JUDGE BROWN: How many rangers did he have under his command?

A I think seven or eight or something like that.

CAPTAIN ALLEE: I have ten counting myself. I now have nine.

A And then in May, of course, of 1967 is when we had one arrest. There was no arrest in April. One arrest on May the 11th, one on May 12th. Then 22 of them on May 18th, and 13 on May 31st. And then six on the following day.

And at that time there was some action taken by the growers that resulted in an injunction, and after that there was no more activity. But I can tell you, gentlemen, that we did our best and I have no apologies for either my actions or those of our Starr County law enforcement officials. And I do believe that had the Rangers not been there there could have been some bloodshed. And it could have been on either side. I was only interested in seeing that the peace was kept.

Q BY MR. PHILLIPS: Mr. Nye, how many full time deputy sheriffs are there in Starr County?

[fol.430]

A There is three and an office deputy.

Q That is the total for the entire County?

A Yes sir. Then there is also—now we have a number of special deputies. There is 40 or 50 of those. In that—we will take Falcon Dam as an example. All of the guards at Falcon are.

Q But they don't robe out over the County?

A Yes sir. And if a person, say, has a game preserve or something like that and he comes in and says I'd like to ask for a special deputization, why, the sheriff will give him one.

JUDGE GARZA: What classification does Mr. Rochester come under?

A He was one of the special deputies, as I understand it, that was on the roll.

JUDGE GARZA: On the road?

A On the list, roll.

JUDGE GARZA: Why did he want one? Did he have trouble with his tractors or what?

A I don't know, Judge, when he got his but I'm under the impression that he got it before this started. But I don't know.

Q BY MR. PHILLIPS: All right. Now then, how many constables are in the County?

A Four

[fol.431] * * * * *

Q BY MR. PHILLIPS: Now then, there has been three full time deputies in addition to these special deputies, plus the office deputy?

A Yes sir.

Q And that was your total law enforcement staff?

A That's right, sir.

Q And is that the reason that Raul Pena and Roberto Pena—they are two of these deputies?

A Yes sir. One of them lives in Roma, Raul Pena. [fol.432] He's the chief deputy. And then he has a cousin by the name of Roberto Pena who lives in Rio Grande City and he's another one of the full time deputies.

Q I believe Judge Brown asked yesterday how it was that these two Penas appeared so frequently at La Casita Farm. The fact is that they are about the only law enforcement available, is that correct?

A Yes sir. The other deputy, he's the traffic deputy and he usually works on traffic.

Q And that's just about all he does?

A Yes sir.

JUDGE GARZA: Mr. Ellert is the office deputy?

A Mr. Ellert is the office deputy. He answers the radio and things of that nature.

Q BY MR. PHILLIPS: Mr. Nye, did you advise the officers in the filing of any of these complaints or drawing these complaints?

A In some of them I did. And we weren't familiar with any of these—I mean any of these laws with respect to picketing and before we filed the first one we also called DPS and did a little research, as much as we could with our

limited facilities there with respect to our legal library, [fol.433] black statutes, and we were—it was my feeling that that was the action we should take.

Q Did you talk to a lawyer at DPS?

A Yes sir.

Q Now DPS, you mean Department of Public Safety?

A Department of Public Safety, yes sir.

Q All right. Have these cases been tried?

A Some of the first ones were tried and the ones with respect to the bridge incident, but I tell you, Mr. Phillips, that fact has brought on further complications with respect to the peace and security of our little County and we had an influx of strangers and we had a situation there where we were concerned about a demonstration there.

Q At the trial?

A Yes sir. And there was—it was extremely well attended by University people from all over and people that—I guess there were several hundred there. And so I felt that this wasn't conducive to the peace and tranquility of our County so I decided on some of these complaints that were pending later on not to seek immediate trial because I felt that that—the situation could get out of hand. But at any rate—and then when [fol.434] we did, our County Judge felt that he should be disqualified and that Starr County wasn't the place to try them because he wanted to give them a fair trial. So I agreed with him and then they were transferred to Hidalgo County.

Q Is that with the agreement of the defense Counsel?

A Well, it was on their motion.

Q On the motion of the attorneys for the defendant?

A Yes sir.

Q And they were all transferred to Hidalgo County?

A Yes sir.

Q Then what happened?

A Well, then they had a hearing in Hidalgo County and transferred them back to Starr County.

JUDGE GARZA: Didn't want that hot potato.

MR. NYE: You better believe it, Judge.

MR. PHILLIPS: I would state to the Court that there is no provision for change of venue on a misdemeanor case.

JUDGE BROWN: That's when the constitution steps in.

MR. PHILLIPS: That's correct, sir.

JUDGE BROWN: And what happened to that case? Judge Spears wrote it.

[fol.435]

MR. PHILLIPS: I don't know just what has happened now.

JUDGE BROWN: Was it appealed? I remember when he wrote it.

MR. CROW: I don't believe that was appealed, Your Honor.

A And then we came back to Court and we were in the process of trying to pick another Judge by agreement, and then of course Mr. McKeithan died.

Q BY MR. PHILLIPS: And then this case was filed?

A And then this case has been pending which is more important.

Q Now, let me ask you this: Is it your contention that if these laws are held constitutional and you are not restrained by this Court that you do intend to try these cases when this matter is concluded?

A Yes, in my opinion it is my duty and I think we have sufficient evidence on each one. And I'm going to go forward with them.

[fols.436-468] * * *

[fol.469] * * * * *

BY MR. PHILLIPS:

Q Did it make any difference to you, Mr. Nye, whether they did organize or did not organize a Union in Starr County?

A No sir.

Q Did you have any agreement with any of the growers in connection with your activities in filing these [fol.470] complaints?

A No sir.

Q And did you file them because you had any representation of any of them as an attorney or did you file them only in your capacity as County Attorney of Starr County?

A I was merely doing my duty as I saw it, sir.

[fols.471-472] ***

[fol.473]

JUAN VELA,
having been first duly sworn on oath, testified through the Interpreter as follows:

DIRECT EXAMINATION

BY MR. PENA:

Q Now what is your name?

A Juan Vela.

Q Now when I ask you a question I want you to wait until the Interpreter has translated the question to Spanish.

A All right.

Q And where do you reside?

A In McAllen.

Q And where are you employed?

A Where I work?

Q Yes.

[fol.474]

A Briffin and Brand in McAllen.

Q BY MR. PENA: Have you ever had an occasion to work for Trophy Farm Number 3 in Starr County?

A Yes, I have worked.

Q BY MR. PENA: What kind of work did you do there?

A I'm a field man for the man who work over there at the field at Griffin and Brand.

Q Did you ever transport any field workers to the farms?

A Yes sir.

Q During the 1967 melon season did you ever have occasion to transport a crew of field workers to Trophy Farm Number 3 in Starr County?

A Yes sir. I send two field workers to harvest the melons.

* * * * *

[fol.475]

A Two crews, yes.

Q BY MR. PENA: Approximately how many field workers were you in charge of?

A There are two crews over there. One maybe composed of 35 hands and the other one of about 25.

Q Approximately what time did you arrive at the gates of Trophy Farm Number 3?

A I don't remember exactly what time but it must be—it was about 7:15 or 7:20 when I went over there to the gate and I found the people over there waiting because they were stopped over there.

Q Who stopped you from getting into the Trophy Farm?

A I don't know who they are but there were several people there at the gate saying that they were not going to work that day to harvest the melons, and then I asked them why, and they told me because they cannot pick this fruit until they pay more.

Q Are you trying to tell the Court that the people there who were blocking the entrance?

A Yes, they were blocking the entry when I told them. I told them to let me go in on that day.

Q Were these people Union picketers?

A They had some signs over there and I didn't know what it was all about.

[fol.476]

Q How many people were there who were blocking the entrance to the farm?

A I could not tell you how many because they were only at the gate. I cannot tell you exactly but about 20 or 25.

Q Were you met at the gate of Trophy Farm daily during the melon season?

A The next day when I went back over there the crews were stopped again there. They didn't stop me. Then I moved about 50 feet away from there and I talked by radio to the office of the Trophy Farm and I told them that they would not let me go in. Then they told me that I had promised them not to come back. Then I told him that I was going to call the office. When I talked to the office by radio the Rangers came and they let me go in.

[fol.477] ***

[fol.478] *****

Q BY MR. PENA: How many picketers were there the second day?

A I cannot tell you exactly but I didn't try to count them. I wouldn't gain anything by counting them. But the

only thing I wanted to do was for them to let me go in to pick up the fruit.

Q Did they use any abusive language on you?

[fol.479]

A They used it with me and with other women.

JUDGE GARZA: No, no. And on other people because there were some women there that were loud talkers and abusive talkers.

Q BY MR. PENA: Can you tell us some of the words that they used?

A They used some bad words.

JUDGE GARZA: The women.

A The women. The ones that were in strike.

Q BY MR. PENA: What did they say?

A One of them said that the melons on that year should become—

JUDGE GARZA: Shit.

A —shit.

Q BY MR. PENA: Did they use any other language similar to that?

A What they use to say was that they were sold.

Q All right. Now can you tell us of any instances that may have occurred while you were out in the fields picking the green peppers?

THE INTERPRETER: I didn't get your question.

Q BY MR. PENA: Can you tell us of any incident between your people and the picketers while you were out harvesting green peppers in Trophy Farm [fol.480] Number 2?

A That was another week. Some other week. When I got through with the melons we started to pick up the peppers. They had a truck with people on the truck where they were taking them back to Reynosa or I don't know where—in automobiles—to take them back when the Rangers came.

Q Did you see a truck parked out there by the side of the road with a loudspeaker?

A That pickup came over there later on when the people were already working inside of the farm.

Q Did they use a loudspeaker?

A Yes sir.

Q What did they say?

A They told me that they were sold, to let me pick up and carry the baskets full of chili, chili peppers.

Q What was the exact word they used, though?

A To let me pick up the peppers, that I was working over there and let me work by myself.

Q Did they ever use the word cabron?

A Yes sir.

Q And what does that mean?

A I cannot explain to you.

MR. PENA: Would the Interpreter care to interpret the word cabron for the record?

[fol.481]

THE INTERPRETER: Well, the dictionary actually says that it means he goat.

MR. PENA: I'll ask the witness—

THE INTERPRETER: But let me further explain that in the common language of the people in Mexico in means a husband who consents to the commission of adultery by his wife with some other man.

JUDGE GARZA: And it is also used synonymously like son-of-a-bitch.

Q BY MR. PENA: And is that one of the words used?

A They were two men over there in the pickup.

JUDGE GARZA: Ladies. Ladies he said.

A About the peppers, it was two men only.

Q BY MR. PENA: And they used a loudspeaker for that?

A Yes sir.

[fols.482-496] * * *

[fol.497]

JAMES WILSON ROCHESTER,
a witness who had previously testified herein, was at this time recalled and testified further, as follows:

DIRECT EXAMINATION

BY MR. GURWITZ:

Q Will you state your name for the record?

A James Wilson Rochester.

Q Where do you live, Mr. Rochester?

A I live on La Casita Farms in Starr County.

[fol.498] * * * * *

Q How long have you been employed by La Casita?

A It was seven years last April.

Q In Starr County?

A Yes.

Q All right, and what is your job with them?

A I'm ranch foreman in charge of the farm operation.

Q All right. You oversee all their farming operation?

A All of the farming operation.

Q All right. Now let me call your attention, please, Mr. Rochester, to some specific incidents. First of all—

MR. GURWITZ: May it please the Court, this is concerning 7.13 and 7.14.

Q BY MR. GURWITZ: First of all, let me call your attention to the date of February 1, 1967. This is concerning an incident that they alleged occurred near the Bazan property on the west edge of La Casita.

[fol.499]

JUDGE GARZA: When they arrested the five Priests.

MR. GURWITZ: Yes, when they arrested the five Priests.

[fols.500-501] ***

[fol.502] *****

Q All right. Sit down just a moment. Okay, sir. Now this incident where some Priests were arrested, tell us from the beginning how you happened to be out there and then what you saw.

A That morning I had went to what we refer to as our north farm. It is north of Highway 83. It isn't on this map.

And I was checking fields for various things, insects, et cetera. I received a call by radio from my tractor foreman and he told me—and his exact words—"Huelgistas are in the field." I asked him where. He gave me the block number which is number 55. And I told him I would be right down and check on it.

Q Did you go down there?

A I went down into the farm through the main gate, I went—

[fol.503] *****

Q All right. Now when you got there, what did you see?

A Well, I came down to the field 65 and as I turned the corner—I might explain that that Bazan property is all big high brush and trees on the west side—you have to go around a corner there before you can even see the field or anyone in it. As I came around the corner there was a number of people standing—some of them in the road, some of them back on the brush edge and two or three right at the end of our vegetable rows. I proceeded on by and the people in the road and over at the end of the vegetable rows moved back over to the brush side. I passed on by and went along the east edge of the Bazan property. I called my office which is there on the farm and told my timekeeper to call the Deputy Sheriff, to call the [fol.504] Sheriff's Office.

Q What were these people doing?

A They were hollering at the workers working in that field which is numbered Field 55.

Q Did some of these people appear to you to be Priests?

A Yes, there was several of them had on the clothing of Priests.

Q All right. Approximately how many people would you say you saw out there all together?

A About a dozen.

Q All right. And when you drove by they all jumped back and got in the brush?

A Well, they didn't jump. They moved back slowly.

Q All right, they got back off of La Casita property?

A Yes.

Q All right, you went on around and called the Sheriff and he came out?

A Well, I called by radio to my office and my timekeeper called the Sheriff's office.

Q All right.

A I then waited north of there until the Deputy Sheriff came out.

Q Did you wait out of sight of these people?

A Yes.

Q All right. Would this brush then be, say, somewhere [fol.505] on the south side of the Bazan property?

A Well, that's almost all either brush or weeds six feet high.

Q All right. Then you waited up here north?

A Yes, quite a bit north.

Q And since they were talking to people in the field in 55 they could not see you beyond the brush?

A No.

Q All right. Mr. Rochester, was this the first time that you recall that they had actually entered into La Casita Farm this far down on this side over here?

A Yes, that's the first time that I ever knew of them coming on to our property.

[fol.506] *****

Q BY MR. GURWITZ: Now who was the Deputy Sheriff that came out?

A It was Roberto and Raul Pena.

Q All right. Were there any arrests made? Did you see any arrests made? Let me ask you this: Did you tell them what happened?

A I told them what I had seen as I drove by between the brush of the Bazan's and our block 55.

[fol.507]

Q All right, what if anything did you then see the deputies do?

A I came back—now they came around on the west side of the Bazan property, on the La Casita road. I came back down on the east side and stopped at the southeast corner of the Bazan property. The deputies went up there and talked to those people a few minutes and started putting them in cars. As a matter of fact they took one of my foreman's pickups. They borrowed it because there were so many people they couldn't get them in their cars.

Q All right. And did they start driving off with them?

A Yes, they started to drive off.

Q Did they actually get all of the people into their car?

A No. Just as they drove up to that point there was two people ran back through the Bazan brush. They were just a very short time putting those people into the two cars—I believe there were two cars—and the one company pickup, and they immediately started to leave. I drove up to the—that would be the southwest corner of the Bazan property—just as one of the deputies went around that corner. And I stopped him and told him that I had seen two of them run through the brush. He had about four or five people [fol.508] in the car with him and he was alone. He was one of the deputies alone. He had no one with him.

And he says, "I can't do anything about it. I've got a car full here." He said, "Can't you take care of it?"

I said, "Well, I'm a deputy sheriff. I'll go see if I can catch him."

[fols.509-513] * * *

[fol.514] * * * * *

Q Okay. Had you ever seen them use loud-speakers before?

[fol.515]

A Oh, many times.

Q To try and talk to your workers in the field?

A Well, yes, in the field. I have seen them many, many times—I have been woken in the morning at 5:00 o'clock with that loud-speaker up there at my house at the main gate with people hollering viva la huelga and playing loud music over it and just talking in Spanish and loud—well, you could hear them for a half mile at that time of morning. Its dark at 5:00 o'clock in the morning. And I have just been about shook out of bed with that thing going.

Q All right. Its pretty powerful, is it?

A Very powerful.

Q All right, sir. That little community there of La Casita—they call it La Casita right around the front gate?

A Yes, its referred to as La Casita—La Casita Ranch or Village.

[fol.516] *****

Q All right. Okay, sir. And now let me go back some and ask you about the incident that occurred on the 17th of November, 1966, which is 7.6 in the pleading and which is the Zoila Ozuna incident. Now where did this happen?

A That incident took place at the main gate of La Casita Farms.

Q All right. About what time of day did this start?

A Well, it was first brought to my attention about 6:45.

Q All right. How was it brought to your attention?

A Well, I had went down on the farm—I usually do that—and my workers come to work at 7:00. I met them down there. My tractor foreman called me [fol.517] on the radio and said there was trouble at the gate. So I went back to the main gate.

Q What did you see when you got there?

A Well, I seen a group of people around out in the approach road and three people standing immediately in our gate.

JUDGE GARZA: May I interrupt you all a minute. Isn't that one of the ones that Mr. Dixie said he was abandoning, wasn't going to offer any evidence on it?

MR. GURWITZ: Yes, sir, it is and I don't intend to go into the aspect of it about which he was going to complain but there are other elements of this incident such as Magdaleno Dimas threatening him which I think are relevant to other matters in this case.

JUDGE GARZA: All right.

Q BY MR. GURWITZ: This is the incident where Dimas subsequently threatened you?

A Yes.

Q All right.

A There were three people standing in our gate. I wouldn't know how many—20 or 25—people around the immediate area outside of the gate. I passed in front of the bus and right by these [fol.518] people blocking the road and told them, "You better move out of the way, I'm going to drive this bus through this gate."

Q All right. Now wait a minute, wait a minute. Let's distinguish between road and gate. Now there is a public road leading up to the gate, is there not?

A Yes.

Q All right. There is a highway that comes off here and down here is a dirt road?

A That is correct.

Q All right. What were they blocking, you say, was the gate entrance?

A The gate.

Q The gate. All right. Is that shown in 7.9B?

A Yes. I might explain it. This gate itself—the actual gate is recessed inside our property line about 15 or 20 feet.

Q All right. Now the—

JUDGE BROWN: Excuse me a minute. You estimate your direct examination and cross examination will be running at least half an hour of this witness?

MR. GURWITZ: I think so.

JUDGE BROWN: I think the Reporter needs a spell, so the Court will stand in recess for ten [fol.519] minutes, please.

(Whereupon a short recess was taken, after which the following proceedings were had:)

JUDGE BROWN: Proceed.

Q BY MR. GURWITZ: Mr. Rochester, before the recess you explained the La Casita gate is recessed 15 to 20 feet. It would be south of your property line?

A That's correct.

Q And you identified picture 7.9B that there were three people standing in your gate blocking your bus?

A In the gateway.

Q All right. Did you have workers on the bus?

A Yes, there was probably 50 or 60 workers on the bus.

Q All right. Were there any cars or other vehicles piled up behind the bus?

A There were several. I don't know how many but there were quite a few.

Q And none of them could get through the gate or to the gate until the bus could get through?

A No, they couldn't possibly.

Q All right. Did you say that there were other picketeers or other union people around the area?

A Oh, there were 20 or 25 all together.

Q What were they doing?

[fol.520]

A They were milling around, standing in close to the sides of the bus in groups.

Q Were any of them trying to talk to people in the cars?

A They were more or less concentrating on the bus. They were hollering. They weren't actually trying to talk in the manner of holding conversation but they were hollering at the people in the cars and the bus.

Q All right, what did you do?

A I went by and informed the people that was blocking our way that I was going to drive the bus through. I got in the bus, I sit down in the seat, and as I did that Magdaleno Dimas hollered, "You son-of-a-bitch, you're not going to do that," and he jumped up in the bus door.

Q All right.

A I jumped out of the seat of the bus and rushed towards him and he jumped back on to the ground.

Q Did you hit him?

A No sir.

Q Or touch him?

A No, I didn't.

Q All right. He jumped in the bus, you turned around and he jumped out of the bus?

A That's correct.

JUDGE GARZA: Were you driving the bus?

[fol.521]

A I had just got in the bus, Your Honor, to get ready to drive it through. My regular bus driver had been instructed to stop when anyone obstructed his way that way.

Q BY MR. GURWITZ: All right. Then what did Magdaleno say or do after he jumped out of the bus?

A Well, he jumped back and as he jumped back Manuel Benavides was standing—had came up when he seen him going in the door and was standing right there, and he reached in—Magdaleno Dimas reached in his pocket. Manuel Benavides grabbed him by the arm and says, "You are not going to do that." I don't know what he intended or what Manuel Benavides thought he intended. They had some words in Spanish which I don't understand. And then Magdaleno Dimas looked up in the bus to me and said, "You son-of-a-bitch, I'll get you."

Q Did he then walk off?

A No, he was standing there beside Manuel Benavides, and I got back in the bus and proceeded to drive on through the gate.

Q All right. After you got on through the gate did you then turn the bus back over to the regular bus driver?

A That's correct. I got through the gate, turned the [fol.522] bus back to the bus driver and got in my pickup and I went about my business.

* * * * *

Q BY MR. GURWITZ: Did you know Mr. Dimas' general reputation?

A I had been told by many of the people around there that he had a very bad reputation, was known to be a violent type of person, and had a criminal record.

Q Did you consider his threat to be serious?

A Absolutely.

Q All right. Now I believe we have covered that incident. All right. Now let me refer you to the incident that occurred on June 1, '67, which is inferentially or subsequently a part of 7.22. This is the Dimas incident. This is on the night that [fol.523] they came on to La Casita property. All right. Now, will you tell us that evening of June 1 where were you working?

A I was at the packing shed in Rio Grande City. La Casita packing shed.

Q All right. Had you gotten any information about Mr. Dimas?

A About 10 o'clock I received information that Magdaleno Dimas had been seen by several people on the north side of the packing shed, on the railroad tracks, and also on the south side of the packing shed in an area—slipping along in an area that has some shrubery here. Had been seen with a rifle.

Q All right, what did you do?

A I went into my office and borrowed my night watchman's pistol.

Q All right.

A And stuck it in my belt.

Q You had it in your belt?

A That's correct.

Q You were concerned that Dimas may attempt to carry out his threat?

A That's correct.

Q All right. Did he subsequently on that evening [fol.524] appear on the premises of La Casita shed?

A Yes, later on, about an hour later. Say around 11 or 11:30. I was busy. I didn't notice the time exactly.

Q Excuse me just a minute. Would it be fair to say that your times are approximate?

A Approximate, yes.

Q All right, go ahead.

A I was standing on the loading dock of La Casita shed and I seen a car drive by and someone hollered viva la huelga. They then proceeded on west about 100 yards or maybe a little less and turned in to La Casita's driveway. They drove up right in front of me in the driveway, about 10 feet from the edge of our packing shed. And it was Magdaleno Dimas and Benito Rodriguez.

Q All right, did they stop?

A They stopped right in front of me.

JUDGE BROWN: Now what time was this about?

A About—somewhere around 11 or 11:30 in the evening, Your Honor.

Q BY MR. GURWITZ: All right. Now you recognized them both?

A I recognized both of them. They were parked under an area light.

[fol.525]

Q Dimas was the one who had threatened you?

A That's correct.

Q And Rodriguez was the one you had arrested that day or caught that day trying to run when they arrested the Priests?

A Not that day.

Q I don't mean that day. It was on that occasion.

A Prior to that.

Q BY MR. GURWITZ: Were there any other threats when you told the Court, "You son-of-a-bitch, I'm going to get you?"

A No, he said, "I'm going to get you."

[fol.526]

Q BY MR. GURWITZ: All right, now what—did they stop when they drove along?

A They stopped. I recognized them and I asked them, "What do you fellows want here?"

Q All right.

A Well, neither of them answered. I was looking down into the car. Magdaleno Dimas had a rifle across his lap with the barrel pointing downward and he reaised it up about—he had the barrel pointing on the floorboard—he raised it to about where the barrel was about even with the dashboard. I pulled my pistol out and shot twice down beside the car.

Q All right. Now which—who was driving?

A Benito Rodriguez.

Q And which side of the car was closest to you?

A The driver's side of the car.

Q Was closest to you?

A Yes.

Q All right.

A He slammed the car in gear to take off, and I hollered, "Hold it, I want to talk"—hollered, "Hold it right there, I want to talk to you," and they then sped away. They went about 100 feet and I seen the tail lights come on all of a sudden and the car slowed down. They put the brakes on. I seen the [fol.527] stop lights. I could see Magdaleno Dimas turn around in the seat, and I fired at the car again.

Q Could you see if he had the gun when he turned around in the seat?

A Not for sure.

Q All right, where did you fire this time?

A I fired at the bottom of the car down near the tires or the gas tank area.

Q Any of these times did you ever shoot at these people?

A No.

Q Okay. Then did they drive on off?

A They went on down the driveway. They had to almost stop to get out of our driveway because its a real sharp turn down there. They headed back towards Rio Grande City in a high speed and that's the last I seen of them. I turned around and told our dispatcher to call the sheriff's office.

Q All right, and the name of your dispatcher?

A His name is—we call him Joe Pena.

Q All right, and he's the son of Roberto Pena?

A Roberto Pena, yes.

Q Who is the deputy sheriff?

A Yes.

Q All right. Now let me call your attention to the [fol.528] incident that occurred on December 28th, 1966, which is 7.9 in the pleadings, which is the Manuel Balli incident. All right, would you tell us what you saw on that occasion?

A Well, I was—

Q Now I'm referring now to the time when someone reached in and either grabbed Mr. Balli by the shoulder or put their hand inside the car. Tell us what you saw.

A When I was out there with Roberto Pena they were blocking the road that morning and—

Q Now tell us what you mean by the road.

A The approach road to the main gate of La Casita Farms.

Q Is that a public road?

A That's a public road, yes.

Q All right. How were they blocking it?

A They had these huge red flags with the white center and a black bird design in them on about six or seven foot standards and they were crossing them in this manner in front of the cars.

Q All right.

A I went down there—well, actually before that Manuel Benevides came and told me that they were doing

this, blocking the road, and asked me to [fol.529] call the sheriff's office which I did. And I went down there. By that time Roberto Pena had already arrived and he was talking to the people trying to persuade them not to block the road.

Q All right. Now when you got there, was the road blocked?

A It was blocked.

Q Were there cars stopped on the road?

A Absolutely, there were several cars stopped.

Q Can you estimate how many?

A Oh, eight or ten.

Q All right.

A Roberto argued with those people for at least 15 minutes. Finally they consented to not block the road. And they let the cars pass. It was one car passed. I don't know whose it was. I'm not positive whose it was. I believe it was my stitcher operator's. But then Manuel Benevides pickup was second in line. He started ahead at a very slow speed. Just as he got to the corner of a fence that is up about a hundred feet from where Roberto Pena and I were standing someone reached through his window and grabbed at him. I was standing looking through the back of his window and I seen the hand strike him looked like on the [fol.530] corner and then slide off and grab his coat in this manner.

* * * * *

Q BY MR. GURWITZ: Could you actually tell if he grabbed his coat or did you just really see his hand go in?

A I seen him take hold.

Q All right.

A I was looking at Manuel's back where I could see the back of his shoulders. I turned to Roberto Pena and said, "Did you see that?" He said, "I sure did." And he went up there and arrested one of the de la Cruz brothers.

Q All right, then what happened?

A He started to take de la Cruz to his car and he was immediately mobbed by about 20 people. They just got around him, they grabbed hold of de la [fol.531] Cruz, they grabbed hold of Deputy Sheriff Pena and I thought they were going to throw him to the ground. And they wrestled with him there for over five minutes.

Q How did you happen to become a special deputy?

A Well, that led up over a period of about five months. I complained to Raul Pena, to Roberto Pena, and just about everybody else that I could find in the sheriff's office of vandalism. I [fol.532] kept having things stolen off my tractors in broad daylight. I would leave a tractor for a few hours in a field and I would come back and find a generator and starter and even in one occasion a radiator taken off a tractor out in the field. And I complained extensively about it. I complained to Randall Nye about it. And they all gave me the same answer, "We can't do anything about it. We're doing all we can. We can't patrol

your farm every minute." Roberto Pena indicated that I should be deputized. Raul Pena told me I should be a deputy out there so I could help take care of that property. And that went on for a long period of time. And Sheriff Solis called my office in the latter part of October, about the last week of October, and he contacted my shop foreman who he knows very well—he has known him for many years.

[fol.533] ***

[fol.534] *****

A Yes sir, it started in—

JUDGE GARZA: June of '66?

A June of '66, and that's when I started noticing this vandalism. I didn't take the deputization until November of the same year.

Q BY MR. GURWITZ: All right. What other things happened to your equipment out there?

A We have had sugar poured in the gas tank of my brother's car. We have had one pump—stationary pump—on the other farm completely burned up. We have had I don't know how many flats caused from man-made objects being placed in the road. They were definitely—there was no doubt that they were made because they were automobile valve stems that were ground off on a grinder to a very sharp point. We have taken those out of tires not once but many, many times. 20 or 30 times a week.

Q Did you notice whether or not the incidence of this generally increased after the picketing started [fol.535] on June 1, '66?

A Well, before the picketing started we would have four to half a dozen flats a week on our equipment because we have quite a bit of equipment. After that time, after June 1st—I can't say exactly when it picked up but it did start happening frequently like 30 or 40 times a week. 30 or 40 flat tires a week.

Q Did this also apply generally to the other vandalism you have described?

A Well, that's when most of it—I have always had a little petty theft but anything major was after June 1st.

Q Of '66?

A Of 1966.

[fol.536-586] ***

[fol.587]

RAUL PENA,
having been first duly sworn on oath, testified, as follows:

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Please state your name.

A Raul Pena.

Q Where do you live, Mr. Pena?

A I live in Roma, Texas.

Q And is that in Starr County?

A Yes sir.

Q And what jobs do you hold?

A I'm the Chief Deputy Sheriff for Starr County, Texas.

Q How long have you been Chief Deputy?

A About ten years.

Q And how long have you worked as a peace officer?

A It will be 20 years on June 1st next year.

Q How many full time Deputies are in the Sheriff's Office?

A Three.

Q And how many part time?

A About six or seven.

[fols.588-593] ***

[fol.594] *****

Q BY MR. PHILLIPS: Then on this incident on

October 12th Chandler was in a parked car near the pickets, there were a number of them there appealing with the employees of the Rancho Grande Farms, and that [fol.595] you arrived with several deputies, drove the car between the pickets, and then Chandler alleges that he approached and asked why you were there, and then you arrested him. Do you remember the arrest of Chandler?

[fol.596] *****

Q BY MR. PHILLIPS: And what were they doing?

A What?

Q What were the pickets doing?

A Well, they were using a big loud—you know, a microphone, and calling to these peoples.

JUDGE BROWN: What were they saying? Can you repeat some of the things that they were saying?

A Well, they were saying that—(witness speaking in Spanish).

JUDGE BROWN: You have to tell me about that.

JUDGE GARZA: "Don't sell out to these people."

JUDGE BROWN: All right.

A You're breaking our strike, you bunch of son-of-bitches. There were a lot of girls there working, too.

Q BY MR. PHILLIPS: Now, did they use any other [fol.597] profanity?

A Yes sir.

Q What else?

A They called them mother fuckers and everything.

[fol.598] *****

Q BY MR. PHILLIPS: —on November 28th the Union had a rally on the Starr County courthouse grounds.

A Yes sir.

Q And they placed a number of Union banners and flags around the courthouse and you took them down?

A Yes sir.

Q All right, would you tell us what that situation was?

A Well, they put one in the pole where we put the United States flag and I think it was very disrespectful, the place where the United States flag used to be, to be one of their banners there. And I took it down.

Q Well, did they have permission from anyone in the courthouse to place these flags?

A No sir.

Q And where did they place them?

A Sir?

Q Did they hang just one on the flagpole or did they have them all over the courthouse?

A They put one on the flagpole, they put one on the windows facing south of the courthouse.

[fols.599-601] * * *

[fol.602] * * * * *

Q BY MR. PHILLIPS: In this incident, Mr. Pena, you allegedly arrested on January 26, 1967, Reverend James Drake and union member Padilla who were peacefully praying in the courthouse.

A Yes sir.

[fol.603] * * * * *

Q All right. What was the situation at the courthouse on the night of January 26th?

A Well, I was in the Sheriff's Office. It was about 9:30 or 10 o'clock at night when one of the jailers called the Sheriff's Office complaining that there was some peoples outside in the street talking back and forth with the prisoners upstairs on the third floor. And he was very afraid that they might try to break the jail because there were about fifteen or twenty outside of the courthouse. So I went out and investigate the matter and I find that there were about fifteen or twenty members of the Union in [fol.604] the street, but Drake and Padilla, they were in the steps, about half ways going into the courthouse. So I told what they are doing there? They say, "We are praying,

you son-of-a-bitch." That's what they said. And the rest of the peoples in the street, they all were calling me lot of names. And they were calling the jailer names, too.

Q What kind of names?

A Well, all the way from son-of-a-bitch to mother-fuckers.

Q And then what did you do?

A I told them to disperse, to go away. And Padilla and Drake refused. So I placed both under arrest, put them in jail. The rest of the people, they all go home. They all left the place.

Q Did the rest of them leave?

A Yes sir, right away.

Q And left peacefully?

A Yes sir.

JUDGE GARZA: Let me ask you this: Did you hear them praying when you first came out? When they were on the steps, were they praying?

A Not a thing, Judge, no sir.

JUDGE GARZA: They weren't praying?

A No sir, I didn't hear nothing but cuss words from [fol.605] them.

[fols.606-626] * * *

[fol.627] * * * * *

Q Tell me—have you been in Court when we stipulated that you have had some dances out there at the courthouse?

A Yes.

Q Do you keep deputies out there when they have a dance?

[fol.628]

A Where?

JUDGE GARZA: Courthouse.

A Yes, sometimes.

Q BY MR. DIXIE: You know, so as to avoid any trouble?

A Yes.

Q Does the orchestra play when you have those dances?

A No sir.

Q You have an orchestra, a band?

A Oh, yes.

Q You have a band?

A Sometimes. Sometimes they got some record players.

Q Bands and record players? And do they play loud so the people can hear it in the streets?

A Sure.

Q Play loud? Now, don't that music disturb anybody in the courthouse?

A Well, its at night.

Q Its at night?

A Its nobody work there but the sheriff's department and we are used to that.

Q You are used to that?

A Yes.

* * * * *

[fols.629-647] * * *

[fol.648]

REDIRECT EXAMINATION

BY MR. PHILLIPS:

Q Let me ask you, Mr. Pena, you were acquainted with Dimas?

A Yes sir.

Q And Benito Rodriguez?

A Yes sir.

Q Now, why was it that when it was reported that they had a gun did that cause any excitement?

A Because we knew the kind of peoples they are. They both—

Q Go ahead.

A They both dangerous mens.

Q What made you think they were dangerous men?

A Because I knew Dimas. He killed for fun, yes sir.

Q Did you know of any record where he had ever killed anyone?

A Yes sir. Killed a man up—somewhere up north. He been in the State penitentiary for that crime. But he was paroled, his parole was revoked, sent back to the State penitentiary. Then he commit two or three crimes in Starr County, too. He cut and killed for fun. That's the kind of man he is.

Q Any crimes of violence?

A Yes sir.

[fol.649]

Q Do you recall any?

A Well, I remember one time he cut Alejandro Guerra's son with a knife all the way from here to here,

yes sir. That was about—I'll say about five years ago.

Q What about Rodriguez?

A Well, Rodriguez, he's an outsider and his reputation is not too good according to the Department of Public Safety.

Q Did you see a criminal record on him?

A Yes.

[fols.650-654] ***

[fol.655] *****

MANUEL BENEVIDES,
having been first duly sworn on oath, testified as follows:

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Please state your name?

A Manuel Benevides.

[fol.656] *****

Q Now, are you employed by La Casita Farms?

A Yes sir.

Q In what capacity?

A Night watchman.

[fol.657] *****

Q Well, any kind of incidents, anything out of the ordinary, put it.

A One night somewhere about—well, let's say middle June or something like that I was sitting by the west end—mostly sit there because I can see the premises, whole grounds around—and a pickup came around and a man—to me it was a man because I can see because there is some lights around—hold out hand through the window, raise to the top of the cab and start firing. I think he fired six shots and hollered at me.

[fol.658]

Q Well, did you get any phone calls while you were on duty there?

A Yes sir, quite a few until I stop answering that phone.

Q What did they say?

A At first—

MR. DIXIE: Just a minute. We object to that as hearsay. If there is no purported identification of the source of the person who made the phone call.

MR. PHILLIPS: We are not offering this for the truth of any of the matters stated under the phone calls.

...rred and to show the climate
Merely for the fact they occur the time of the strike.
and the conditions existing at
shall be received for that

JUDGE BROWN: It
limited purpose.

...ght, sir.

MR. PHILLIPS: All ri

...none mostly on account that

A First I answered the pswer the night phone. First
by the company I could anttle later part of midnight,
time, somewhere—let's say le ring so I just went to the
early hours, I hear the phonar the voice say, "We get you
office and pick it up and I he" That's what I hear on the
some time, you son-of-bitch.
[fol.659] phone.

[fol.660] *****

A Later on—I mean alm ost every night they start—I
mean the phone start ringing and I just go pick it up and
somebody start laughing, giggling. I mean making noises to
the phone. Just hand up. They never talk, say anything
more. So I told Mr. Roches ter, the boss there, that I was
going to quit answering the phone for a while. It was
getting on my nerves, you know. Somebody making funny
calls at night.

Q Have you ever gotten any of these calls before the
strike started?

A No.

Q Did you go armed?

A Yes sir, because I got permit for a gun. I mean I'm a Constable. I don't use it anyway but—

Q Now, how long did you stay at the packing shed?

A I stayed until—I think it was about the 5th because the other boy that used to be the night watchman out on the farm got killed in a car accident so they transferred me to the farm because that's the biggest part of the company.

[fol.661] * * * * *

Q All right. Now, did any incidents happen to you while you were out on the farm?

A I can mention one that I remember because it scare me little while. I was riding back from what we call shed number 2—that's up at the river—and I got to go to it to check the pumps, things like that at night, and I stop the car and got off to go look inside a shed and I heard a pop or whatever you want to call it, or a bang, like a whistle—like a bullet going by. Then I start looking around and called back, called the sheriff's department and explained to them somebody take a shot at me, I thought so.

* * * * *

[fols.662-664] * * *

[fol.665] * * * * *

JUDGE GARZA: What did you see out there in connection with Balli?

A That's what I was going to say. I was standing there and I saw a pickup little farther back and there was something going on, and I saw this boy put his hand

through the window, open side the door—and I saw something like that but I don't know what exactly. Maybe he grab it or something through the pickup window. That's all I say.

Q BY MR. PHILLIPS: All right, then what happened?

A I seen arrive while ago and standing little farther [fol.666] where the roads joining together little farther from the entrance and I saw him coming around talking to this Librado, and then a lot of people—say about 12, maybe 15—bunching him. They got him by his arm, by his body.

JUDGE GARZA: Who was that?

A That was another deputy arrived little before that.

JUDGE GARZA: What deputy was that?

A Roberto Pena.

Q BY MR. PHILLIPS: They actually grabbed Roberto?

A They had him. So I left where I was standing and went out there and told the boys leave him alone, they were interfering with the arrest by duly deputy—deputy sheriff—and so Librado told that he would go alone. He would go in his own pickup.

* * * * *

[fols.667-672] * * *

[fol.673] * * * * *

Q All right. Now let's go over a little bit further. And I'm going to refer to 7.17. You filed a complaint against Mr. Nelson in which you allege he threatened the life of a Ranger?

[fol.674]

A Yes sir.

Q All right, would you tell us about that incident? Where were you and where did it happen?

A I was getting ready to leave the sheriff's department office because mostly I go there, like I say, between 8:00 and 12:00. And I was getting close to the door when this man that I know his name was Nelson came out and he was so—I mean mad, whatever you want to call it, angry. And told me—he asked me, he said, "Have you seen that son-of-a-bitch Captain Allee?" I said, "I don't work for him so I don't know where he's at." So he said, "Well, I'm going to tell you something." I said, "Go ahead." I didn't know what he was going to say. So he said, "You tell that son-of-a-bitch that get man off my man because there's going to be some Rangers killed." So I told him—because the other deputy was already right behind me and they all was—the door was little farther—and I said, "Will you repeat it so I can understand what the message is?" Trying to make him repeat it so the other man can hear it. And he repeated about the same words. And then I tell you, "Well, come inside." Trying to get him in the office to the other deputy to arrest him. So he just start [fol.675] running to the hall leading to the both doors. So we just can't catch him. He was gone by the time we tried to grab him or something.

JUDGE GARZA: But the man was to tell Captain Allee to get the men off his men because there would be some dead men?

A I hear he said going to get some Rangers killed or Rangers killed or something like that.

[fols.676-687] * * *

[fol.688]

FEDERICO ELLERT, JR.,
having been first duly sworn on oath, testified, as follows:

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Please state your name.

A Federico Ellert, Jr.

Q Can you speak up just a little bit, Mr. Ellert?

JUDGE GARZA: Speak louder so they can hear you.

A Federico Ellert, Jr.

Q BY MR. PHILLIPS: How old are you, Mr. Ellert?

A Sir?

Q How old are you?

A I'm 70 years old.

Q You are 70 years old. How long have you been a Deputy Sheriff?

A For a long time.

[fol.689] *****

Q It's alleged that on October 24th the Union's president Arredondo was among a group of persons that was arrested at the Roma International Bridge and taken after arrest to the Sheriff's Office in Rio Grande City. Do you remember that occasion?

A Yes.

Q And then it's alleged that he joined others in chanting viva la huelga and that you hit him and threatened him with a loaded and cocked pistol at his head. Will you tell us about that incident?

A Well, it happened this way: I was pretty busy there at the office when I heard a big hollering.

JUDGE GARZA: Speak up a little bit louder.

A Well, I heard a big noise hollering and I got out of my desk to see what was going on, and it was a bunch of people in front door and one of the men ahead—it was Domingo Arredondo—I told this man to stop that hollering and don't make any noise, that this [fol.690] was the courthouse, a respectful place. And especially the Sheriff's Department Office. I said, "Will you please be peaceful?" And then I talked to him in Spanish saying the same thing. Then was when Domingo Arredondo jump on me close to my ear and holler as loud as he could viva la huelga. When he got on top of me I shoved him back that way and I went to my gun because there were too men in there.

Q Did you pull your gun out?

A Not much, just little bit. I just got ready. And that was all.

Q Did you hold it or point it at Arredondo?

A No, not at him.

Q Did you point it at anyone?

A I don't remember pointing at any one.

Q Did you ever take it completely out of its scabbard?

A No, not that I know of.

Q All right. I want to ask you about another incident. This would be 7.17. Were you present when Nelson came into the courthouse about May 12th of '67 and talked to Manuel Benavides?

A Yes sir.

Q Could you hear their conversation?

A Yes sir.

Q What was said?

[fol.691]

A Well, it was more or less about five minutes to 12, and Manuel Benavides and myself were sitting on the table up there when Manuel Benavides decided to go eat lunch.

He met on the way coming—on the way going out he met Nelson and Nelson asked Benavides where is Captain Allee.

Q Is that his exact words?

A Not exactly. He use a rough language.

JUDGE GARZA: Well, tell what he said.

Q BY MR. PHILLIPS: Repeat what he said.

A He said, "Where is Captain Allee? Where is that son-of-a-bitch?"

Q All right, then what was said?

A Manuel told him he don't know. Must be here somewhere in town. And then he said, "Well, you tell that son-of-a-bitch that some of his Rangers are going to be killed." I talked to Manuel and I said, "Get that man." But that man run away pretty fast outside of the office.

[fols.692-693] * * *

[fol.694]

S. E. ROGERS,
having been first duly sworn on oath, testified as follows:

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Please state your name?

A S. E. Rogers.

Q Where do you live, Mr. Rogers?

A Live in Nacogdoches, Texas.

Q What is your occupation?

A Assistant Chief Special Agent, Missouri Pacific Railroad.

Q BY MR. PHILLIPS: Were you acquainted with the fact that there was a labor dispute in 1966 and '67?

A Yes sir.

[fol.695] *****

Q And why was the railroad interested?

A Interested in—

Q In the labor dispute.

A In the strike? Well, we had a bridge that was burned. We had someone get on the track and had to be pulled off so we could operate our train.

JUDGE GARZA: Somebody just lie down on the track, wouldn't move?

A Yes sir, yes sir.

Q BY MR. PHILLIPS: Anything else reported to you?

A Well, we had rocks thrown at our cabooses and rocks put on the track, beer bottles and things like that.

Q Anything else? Any other incidents?

A Well, several times they would get on there with their pickets and we would have to have them removed so the crews would operate.

[fol.696] *****

Q Who did you ask assistance from?

A Colonel Garrison.

Q And who is Colonel Garrison?

A He's head of the Department of Public Safety for the State of Texas. He was at that time.

Q And about what time was it that you asked for assistance?

A Sometime in April in 1967. I don't recall the date.

Q Did you get any assistance?

A Yes sir, I did.

Q What was the nature of it?

A Captain Allee and about three or four Rangers or more.

Q Well, what kind of assistance did they give you?

A They kept the tracks clear, kept them off the tracks so we could operate our trains.

Q Now, did they ride the train?

A Some of them did, yes.

Q And how often?

A Most every day.

Q Did they have occasion to remove people from the tracks?

[fol.697] * * * * *

Q BY MR. PHILLIPS: There is an allegation in this case that there were a number of strikers in Mission, Texas, on your railroad track on one occasion.

A Yes sir.

Q Can you tell us about when that was?

A On May 26, 1967, evening.

Q And what happened on that occasion? Were you present? Let me ask you that.

A Yes, I was.

Q And what happened?

A Well, there was, oh, about—several of them got on our tracks as our train was pulling in and they were arrested and removed from the track.

Q Now, were they actually on the track?

A They were standing—yes, where the train probably would have struck them.

Q And was the train there?

[fol.698]

A They got on as the train approached.

Q The train was approaching?

A Yes sir.

Q All right, then what—were the Rangers there?

A Yes sir.

Q How many of your railroad people were there?

A I don't recall. We had about ten men here but I don't recall exactly how many were right there at that time. I'd say about three or four of them.

JUDGE BROWN: Special agents?

A Yes sir.

Q BY MR. PHILLIPS: Now, did you ask any assistance from the Rangers on that occasion?

A Well, yes. I didn't particularly have to ask because we had been working the train all the way from Mission.

Q To keep them open?

A To keep the track open, yes sir.

Q And then what happened when you saw the people all gathered on the track?

A They were placed under arrest and removed from the track.

Q And what happened to them then?

A We carried them to Edinburg.

Q Did you observe these arrests?

[fol.699]

A Most of them, yes. About 11 of them.

Q And were these arrests made by the Rangers or by your men?

A Well, I'd say both.

Q Did you notice any acts of violence on the part of either the strikers or your men or on the part of the Rangers?

A No sir.

Q You were present and could see and observe what was going on?

A Yes sir.

[fols.700-721] ***

[fol.722]

C. R. JOHNSON,
having been first duly sworn on oath, testified as follows:

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Please state your name?

A C. R. Johnson.

Q What is your position?

A Chief Special Agent, Missouri Pacific Railroad.

Q And how long have you been employed by the
Missouri Pacific?

A Nearly 35 years.

Q And you were so employed all during the year
1967?

A Yes sir.

Q Were you present in Mission on the night of May
26, 1967?

A Yes sir.

[fols.723-735] * * *

[fol.736] * * * * *

Q BY MR. PHILLIPS:

anywhere else other than Miss Now, did picketing occur
sion and Rio Grande City?

A They picketed this tr
City. Now I don't know the
the country enough to testi
there they had separated an
but they were back down in
picketed, of course, at Miss
again down—well, practical
places between there and Ha
being on the train, why, th
course. We found one swi
station.
they would separate them, of
tch thrown at—oh, the next

JUDGE BROWN: W
which the presence of people
the movement of the train? Was this the only occasion in
e on the track itself obstructed

A This was the biggest o

JUDGE BROWN: Time that I witnessed, yes sir.
your operation was the pre
line and its effect upon you the most disconcerting thing to
people, I suppose? presence of [fol.737] the picket

Union Brotherhood operating

A Well, we were conce
dent would happen that m
that's the reason we sent th
engine. That was the thing
turned that possibly some inci-
might cause a train wreck, and

JUDGE BROWN: A
at car, a rail car, ahead of the
we were concerned with, too.

—ll right.

Q BY MR. PHILLIPS: Now, I don't believe I understood that. Why did you have a car go in front of the train?

A Because if some incident happened like a switch was thrown or, well, like the bridge fire or something like that, they had a radio, they could contact the train and keep it from getting into this thing.

Q Well, had any switches been thrown?

A There was one thrown that night. The next station below Mission. What's the name of it?

Q Alamo, Pharr?

A McAllen. It was a switch into an industry that we had to switch.

JUDGE BROWN: Did they have to break a lock to throw the switch?

A The lock was gone. I don't know where. Maybe it [fol.738] wouldn't be one there. But we always assume there is.

[fols.739-769] ***

[fol.770] *****

TESTIMONY of FATHER SHERRIL SMITH By MR. GURWITZ:

MR. GURWITZ: First one is from the deposition of Father Sherril Smith, beginning on Line 20, Page 25: (Reading)—

Q And the gist of what you were saying to them, as I understood in reply to Mr. Dixie was that they should quit their jobs and join the Union?

A Yes, and to co-operate with their brothers and [fol.771] co-operate in the cause.

Q All right, and if you could have gotten them to walk out, then you would have felt that you had done your job well or not your job—I'm sorry—but what you had come here to achieve?

A Yes.

Q All right. Do you remember—I know that you certainly didn't curse the workers, Father.

A No.

Q But do you remember if you used language that was couched so that it would make them feel bad or ashamed if they didn't join the other people in what you felt was the right thing?

A No.

Q Did you refer to them as slaves or victims or—

A No, I don't remember using words like that. I don't remember but perhaps I used the word esquirol which in Spanish means scab.

Q Scab.

A I might have used that.

Q You might have referred to them as that?

A Yes sir.

Q You don't think that such a word would be intended to make them feel bad or ashamed of the fact that they were working when you felt they should not [fol.772] be working?

A Well, the word taken in its context and the context of the labor dispute is not a real happy word. Let's face it.

Q Father, —

A Let me finish.

Q Okay. I'm sorry.

A Sure, it has got punch to it and an edge to it.

Q And you meant it to?

A Sir?

Q You meant it to?

A Yes.

Q But is there anything context, Father, in which I could call you a scab that you would not feel offended?

A Well, you have got an objective and a subjective reality here. I suppose objectively I might, you know, get my back up about it.

Q Okay. Let's just leave it that you said it has got punch.

A Yes, sure it has.

[fol.773]

Q Why did you pick La Casita?

A Because that was the place where they were trying to make their greatest effort.

Q That was the focal point of the strike, was it not?

A Yes, it was.

Q La Casita?

A It seems as though it was at that time, yes.

[fols.774-782] ***

[fol.783]

CAPTAIN A. Y. ALLEE,
having been first duly sworn on oath, testified as follows:

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q You have been sworn, Captain Allee?

A Yes sir.

Q Will you state your name for the record?

A Alfred Young Allee is my full name.

Q And where do you reside?

A I reside in Carrizo Springs, Dimmit County, Texas.

Q What is your occupation?

A Captain of the Texas Ranger Company D.

Q How long have you been a peace officer, Captain Allee?

A About 43-44 years. Been 38 years Ranger, sir.

Q 38 years in the Rangers?

A Yes sir.

Q And how long have you been Captain of Company D?

A 21 years.

Q What area does Company D cover?

A Pardon?

Q What area of the State does Company D cover?

A We cover practically entire South Texas. All this [fol.784] area from here plumb—from Carrizo Springs all the way down here, of course Uvalde, New Braunfels, San Antonio, Seguin, Goliad, Victoria. We have 39 Counties.

Q And how many men do you have?

A I have at this time Eight men, myself nine. We usually have a full company of ten men.

[fol.785] *****

A Some time in 1966, Judge Phillips. I can't tell you just exact date. But we had a dispute down there and I think—I know I did—I sent Sergeant Denson down there. He was my Sergeant at that time. And I sent him down there to make an investigation at the request of Randall Nye, the County Attorney.

Q Do you usually make investigations of that nature on your own initiative or do your requests usually originate with County officials?

[fol.786]

A Well, we don't usually make them on our own initiative. We usually requested to come in there by some County official.

Q Now, do you know how long you kept Rangers there the first time?

A I kept Rangers there the first period of 1966 off and on—not all the time but ever since I got the first call.

Q All right. Now how did you happen to go down there [fol.787] yourself the second time—the first time that you went? I believe that was in May of 1967.

A Randall Nye and someone else—I don't remember who it was—had gone to Austin and talked to Colonel Garrison, and they requested the presence of the Rangers there until this situation eased. They didn't have adequate number of Deputy Sheriffs to handle the situation and they requested Rangers come in down there.

Q Now, let me ask you this: Do you have what we commonly term a house counsel? That is a lawyer that works for the Department of Public Safety?

A Yes sir, we have counsel up there. He more or less—he preaches on these laws. Name is Norma Suarez, S U A R E Z.

Q Before you went on this occasion, did you make any request of him concerning his opinion as to the validity of Article 5154f?

A I did.

Q Did you make that directly to him or through Colonel Garrison?

A I made it to him and also to Colonel Garrison. I told both of them—Colonel Garrison wasn't too well at that time.

[fols.788-791] * * *

[fol.792] * * * * *

Q BY MR. PHILLIPS: Did you go out to the Rio Grande international bridge?

A I went out later, yes sir. I was called out there. The feared might be some demonstration of some kind there, that they had some workers coming across the bridge from the Camargo side, some green card workers.

Q Well, now just describe the scene you saw at the bridge on that day.

A When I got to the Bridge the bridge wasn't open. I don't think it opened until about 8 a.m. And they opened shortly after that. And these cars, they begin to come across. And Reverand Krueger and

[fol.793] * * * * *

Q You didn't arrest anyone there?

A I didn't.

Q Did you advise?

A Did I do what, sir?

Q Did you advise, counsel union members?

A I didn't counsel the, no sir. Reverand Krueger—and I don't know who else it was—I think Benito Rodriguez was probably there and one or two others whom I didn't know—I hadn't been there long enough to get acquainted with any of them—they told me that the green card workers had their jobs. And I merely told them this, I said, "Now, look" I said, "I don't know. You might claim that and you might not. [fol.794] I don't know anything about this situation, but if any of you people want to work," I said, "I can get you a job to work for a dollar and a

quarter an hour the next ten minutes." That's the only thing I told them. I did tell them that, yes sir.

Q You didn't tell them to abandon their strike?

A No sir, I didn't tell them to abandon their strike. I don't care if they go on with it from now on, as long as its peaceful.

Q In other words, you do not care whether or not they have a union or don't have a union in Starr County?

A That's right. It's immaterial to me as far as union is concerned. I'm not prejudiced against them. They can strike from now until doomsday. I don't care as long as they do it in a peaceful manner.

[fol.795] ***

[fol.796] *****

A I told him that he could picket as long as he picketed peaceful, and so they stood around there a while and I talked—I had called the sheriff's office—I wanted to find out about that property. Mr. Jim Rochester was out there, too, at that time. And I didn't want any trouble to start whatsoever between the pickets and the workers in the field.

Q Well, did you tell the pickets they could or could not call out to the workers?

A I didn't tell them that, no sir.

Q Did you tell them they could or couldn't—

A And so at that time, well, Reverend Krueger, he stepped the distance off. I told him where they should picket, 50 feet apart. And Reverend Krueger stepped it off himself. And the deputy sheriffs—I sent them off to see if they could find Mr. Solis, and they couldn't. And they came back.

[fol.797] * * * * *

Q All right, the next allegation is 7.18, that on May 18th a number of them were peacefully assembled near the entrance to Trophy Farm and you and other Rangers arrested them and jailed them.

A Yes sir, we did. That was on that same road, I think. Same road but it was further up.

Q Will you tell us about that? When you got to Trophy Farms, what—will you describe the scene there?

A Well, they had a loud-speaker on a truck that—the Union worker did—and a loud-speaker on the La Casita truck and it had a record on it, and it was playing back into the United Farm Workers Organizing Committee truck. They trying to block [fol.798] the sound out. They were calling in to the pickets in the field there to come out and join their Union to work.

Q Now, Captain, I don't believe you understood me. I asked you when you first got to Trophy Farms what you observed. What did you see at the time when you first drove up?

A Well, I saw these pickets there.

Q Where were they?

A They were on the road there.

Q Just at the side of the road?

A Side of the road, yes sir.

Q Were they near the gate or away from the gate?

A Oh, no, they were away from the gate.

Q And how close together were they?

A Oh, they were all in a bunch there. They were all in a bunch.

Q What?

A They were all in a bunch there, all of them together.

Q All in a bunch. And about how many of them?

A Oh, I don't know. Maybe 10 or 12, then they were still coming. They kept on a-coming after we got there.

Q Now, how did you happen to go out there on that morning?

[fol.799]

A I got a call on that occasion. The same way I get those calls. And we just went on out there.

Q Asking you to come out?

A Yes sir.

JUDGE BROWN: Could you find out who called?

Q BY MR. PHILLIPS: Who called?

A I just don't know. I don't know who called.

Q But you were told—what were you told?

A I was told that there were more pickets gathering down there on that road and it liable to be trouble. They had these melon knives that they cut the melon off, you know—gather these melons with. And it looked like it might be trouble if the things started.

Q Now, who had the melon knives?

A The workers in the field.

Q Now, what were they saying to the workers in the field? Did you hear them?

A Oh, they were just hollering out, trying to tell them to come out and join the Union there, that they get more money. It was first one thing and another. And told them—(witness speaking in Spanish)—and things like that, you see.

[fols.800-807] * * *

[fol.808] * * * * *

Q BY MR. PHILLIPS: All right, when did you first get Mission, Texas, on the night of the 26th?

A Oh, we got in there that night about the time the [fol.809] train did. I don't know exactly what time it was. I didn't keep a time schedule on that. I imagine it was somewhere around 8 o'clock, maybe a little later. I know the train left earlier than it was supposed to leave.

JUDGE BROWN: Have you come from Rio Grande City?

A Yes sir.

JUDGE BROWN: Or were you—

A Yes sir.

JUDGE BROWN: And was there a rumor out there was going to be some trouble at Mission?

A Yes sir, there was rumor out at Rio Grande City that they were going to lie down on the railroad track there, there at Rio Grande City. So left out a little earlier there and we got into Mission, and so that's when they come on up there.

Q BY MR. PHILLIPS: Well, Captain, during this period of time were you or other Rangers accompanying the train on its run from Rio Grande City to Mission?

A Yes sir, I accompanied the train while I was there. Now I was there a while and some of the Rangers was there and then I would leave them and have some other Rangers come in there.

Q And that was at the request of the railroad?

[fol.810]

A Yes sir.

Q Now, how did you accompany the train? Did you ride on the train?

A Well, sometimes I went in my car and sometimes I rode that high rail car.

Q That was the car in front of the train?

A In front of the train, yes sir.

Q And did they run this car in front of the train practically every trip?

A Did they do what?

Q Did they run this car, this high rail car that you called it, practically every trip in front of the train?

A Yes sir, they ran it every trip in front of the train. They patrolled that track during the day backwards and forwards. Then they would come down and meet the train and it would go in front of the train when it left out loaded.

[fol.811] *****

Q Well, that's not important, Captain. What was the scene—what did you see when you got to the crossing of Conway Street, I believe it is, and—

A Yes sir, Conway.

Q —and the railroad?

A I saw these pickets there. They were there and they came out across that track there and they was trying to block the train from going through. They were going to throw a solid block there of pickets.

JUDGE BROWN: It would help us a good deal, Captain, especially in time, if you would try to give us the details. Now you say they were trying to block the train. It would be easier—where were they, how far apart were they, were they standing with their arms locked? This is what we want to know.

[fol.812]

A No, they weren't standing with their arms locked. They were just all together there.

JUDGE BROWN: On the track itself?

A Yes sir, on the track, plumb across those tracks.

JUDGE BROWN: So the locomotive came on along it would hit them?

A Well, the train would have run over them if they hadn't moved.

Q BY MR. PHILLIPS: Now, Captain, let me ask you something right here. Is that train made up there in Mission after it gets there?

A Yes sir, that train is made up over there in Rio Grande City and it pulled in to Mission.

Q Then what?

A Then they cut loose from that and the crew quits there and then another crew makes up and gets the engine and backs down there and gets that train and pulls on out.

Q Well, now when they switch—do they switch? Did it go across this crossing on Conway Street?

A Yes sir.

Q And then back up again?

A Yes sir.

Q They had to do that to hook-up to the rest of the train?

[fol.813]

A That's right.

Q So that crossing is essential even before the train tries to leave Mission for Harlingen?

A That's right.

Q Now you arrested these people at this time?

A Yes sir.

Q Did you have any—on that first group of 11 people, were there any resistance to any attempt to arrest them?

A I can't hear you.

Q Was there a resistance to your attempt to arrest any of this first—

A There wasn't too much resistance on that particular occasion, no sir. One old boy lay down. I don't remember his name. Jerome Preiss and I, we pick him up and carried him over there and sat his down, and we called for a deputy sheriff's car and they came over there and we lifted him up and put him in the car and they took him on to Hidalgo County jail over in Edinburg.

Q Was there much noise?

A Oh, there was lots of noise, hollering viva la huelga and first one thing and another like that.

Q Were there spectators along that were not taking part?

[fol.814]

A Lots of spectators.

Q These were not taking part in it?

A That's right. Those spectators stayed back. They didn't go on the track.

Q About how many spectators were around?

A Oh, I imagine 75 or hundred, maybe 200. I don't know. Just a fair estimate there I'd say it was a hundred.

Q Were they making any noise?

A No sir, not a word in the world.

Q They were just looking?

A Just looking.

Q And the noise was all coming from the strikers?

A Yes.

Q All right. Then did you arrest everyone at that time that you felt was blocking the railroad track?

A I didn't arrest everyone. If I did I'd have to arrest spectators.

Q I say the ones blocking the railroad.

A Yes sir, all those picketers blocking the railroad track I arrested.

JUDGE BROWN: Was the train stopped at the time you started making these arrests?

A It was coming, Your Honor. It was coming on and it wasn't too far from it.

[fol.815]

JUDGE BROWN: Could you see it?

A Oh, yes, I could see the train.

JUDGE BROWN: Had it stopped to make up-switching some other cars?

A Well, it was coming on through. It was coming on through Monroe Street, what it was doing. The train was

right there at the road. Sam Rogers, he was there and so he wanted the people off the track and he said, "You will have to get off, get on back." And he asked our assistance and we helped him. We arrested them.

Q BY MR. PHILLIPS: All right, how many trains went through there that night?

A Two.

Q Two. And this was the first one?

A Well, this is the first one, engine, yes sir. This is the first train. Then they go down and get another engine, if I understand it right, and another crew and go back down and hook on that train and then leave out with it.

Q All right.

A The second time is when we arrested Reverend Krueger and Adair and Magdaleno Dimas.

Q What about Adair?

A They were there just trying to create another [fol.816] situation when this train pulled out—second train—and trying to get another strike—bunch of pickets out there. And so I saw it wasn't going to work, going to create trouble, and I went over and tried to talk to Krueger, and Krueger told me then, he says—well, same thing—he said, "You have got my men in jail. Why don't you put me in? You have got my men in there. Why don't you put me in?" And that's when I told him, "I'm sure as hell going to accommodate you. That's the second time

you told me that." And that's when Magdaleno Dimas came up there and started talking to me.

Q And what happened with Dimas?

A Waving that hamburger and spitting mustard in my face and every other thing, and I slapped it out of his hand. That's all I did. "You are not going to be spitting in my dern face, I'll tell you that." I didn't like it a bit.

Q Did you arrest him?

A Yes, I arrested him. I didn't—one of the other rangers did. I think they arrested Mrs. Krueger and I think Adair was arrested. I don't know who else was arrested. They were taken to Hidalgo—

Q All right. Now it was at your direction that Adair was arrested?

[fol.817]

A Do what?

Q Did you direct anyone to arrest Adair?

A I didn't direct anyone to arrest Adair, no sir. I had Krueger on the belt and taking him to the car.

Q Did you direct anyone to arrest Mrs. Krueger?

A No.

Q You didn't ask anyone to do that?

A Not that I know of. If I did, I don't remember. But I'll take the blame for it. I'm the Captain. What difference does it make? Whatever they did met my approval, I'll say that.

Q But it wasn't necessarily your direction?

A No sir. But I'm sure behind them. If they had reason to arrest her, well, I'm behind them.

Q All right, then let's go on over to the night of June 1st. Where were you on the night of June 1st?

A I was in Mission on the night of June 1st. I was there, I guess, until about—I don't know what time it was—around 10:00-10:15.

Q And then where did you go?

A Well, I was talking to a party there getting some information, and I had my radio temporarily turned off. I had been out of service some 45 minutes. So when I turned it on, well, I heard Rio Grande City calling Unit 6 and Unit 16, my Sergeant over there, [fol.818] trying to talk to them—did talk to them—so he heard the information and told him they wanted me back in Rio Grande City soon as I could get there, that Magdaleno Dimas had been seen down there with a gun—excuse me, my throat's dry—early part of the afternoon.

JUDGE BROWN: Get him some water, please.

JUDGE GARZA: Just a minute, Captain. He will get you some water.

CAPTAIN ALLEE: That's all right. It will be all right.

A And he told me what it was, that Magdaleno Dimas was seen at the La Casita shed with a gun early part of the afternoon.

Q BY MR. PHILLIPS: Well, now why did that cause any excitement?

A Sir?

Q Why did that cause any excitement?

A Well, I don't know until—and they wanted me back down there as quick as they could. After I could get there, then I'll tell you.

Q All right, did you know Magdaleno Dimas?

A Yes, I knew Magdaleno Dimas. I knew of him. I had a file—his record is in my office for I don't know how long. I think you have got it over there some-[fol.819] where. I have known Magdaleno Dimas.

Q And you were aware of his record?

A Yes sir, I was aware of his record. I was aware of him. I knew what he would do. Because I knew what he was capable of doing. I knew what he would do for a quarter or anything, I mean.

Q You did consider him dangerous?

A I considered him dangerous, yes sir.

Q And why?

A And why?

Q Yes.

A Because he had killed a man down there at Floresville, and, by George, attempted to kill another and they had given him five years, I think, in the penitentiary—three years—and they gave him two years suspended sentence on the other and it ran CC. That's the only think I know. Magdaleno got a 2-page record there for various things that he has done. He spent a year over here in the County jail at Starr County. He has been picked up for smuggling aliens. I think he was tried right here in this Court for that, if I'm not mistaken.

JUDGE GARZA: He's one of my probationers.

CAPTAIN ALLEE: Sir?

JUDGE GARZA: He's one of my probationers.

[fol.820] * * * * *

A Rochester. And he said he came back in the car, he [fol.821] and Benito Rodriguez, and they had a .22 across their lap. He said he attempted to raise that gun up, and he said he told me last November, he said, "I'll get you, you son-of-bitch," and said, "Hell, he's going to kill me. I'm going to ask for a damn Congressional investigation of this if something isn't done."

And I said, "Well, now we will find him. By gosh, we will find him."

I went out there and talked to Raul and Roberto Pena, and I said, "You all go one way and I'll go look another," and so we started out hunting him. So I went to the Union Hall. I saw William Chandler there, and I saw this boy Alejandro Moreno—I think his name was—young fellow—I didn't know what his name was at that time, and tell you the truth I didn't learn it until today—didn't really learn what it was. Even filed a complaint on him that night but didn't remember it. And so I got out of the car and asked William Chandler, I said, "I want to know where this Magdaleno Dimas is."

MR. DIXIE: Did you tell him why you were looking for him?

A Yes sir. I said he had a gun. He was at the packing shed and he threatened Jim Rochester. And so he said, "I don't know where he is, I haven't seen him. [fol.822] I don't know where he is." He was just as unconcerned as that doggone lamp sitting up there.

And I got back in the car. I wasn't drunk that time either. They claim I was but I wasn't. And so I said, "Pull on around the corner. Drive up there about half a block and pull off your lights and leave your motor running. We are going to find this Magdaleno Dimas."

They pulled up there and cut off his lights and wasn't long here come William Chandler and this Moreno boy, the one with the little mustache.

JUDGE GARZA: He's sitting over there.

A He didn't have that bigote, I don't think, then. And so, sure enough, little bit, well, here come William

Chandler in this little old Studebaker, and I said, "Just follow, don't turn on your lights." And he followed him. Went up to Cathy Baker's.

JUDGE GARZA: Who is Cathy Baker? Nobody ever said.

A Well, Cathy Baker is a girl, when this Union came in, United Farm Workers Organizing Committee—as far as I know—other than that I don't know, but she was very active in this Union. And she later married this Benito Rodriguez. She's living with him over in San Antonio now, or if he isn't in the penitentiary. [fol.823] He's probably up there. He got caught with marijuana.

And so they got out and went up to the door—William Chandler did. So he called to this Dimas and he came out of the door with a gun in his hand. I told Kyle, I said, "Just turn on your lights."

JUDGE BROWN: Who was with you, Captain?

A Kyle Dawson. I said, "Turn on the lights of your automobile," and so he did. And so Magdaleno Dimas, he dropped the doggone gun and broke and run. I could have killed him if I wanted to but I didn't want to kill him. Didn't want to hurt him. I could have shot him three or four times before he got in that door if I was that kind of feller. I didn't want to.

I hollered at him, told him he was under arrest. "We didn't do it." I said, "Where's the gun, what did he do with it?" He said he threw the gun down. Then this Jim Chandler said, "The gun is laying over here by us." He

said, "It's right here, laying right here by the car." I said, "Pick it up." They wouldn't pick it up. I did—I picked the thing up.

I said, "Now you and Alejandro get in my car." They got in the car. I didn't poke him with the shotgun. He got in. I didn't poke him. He sit [fol.824] there. I radioed in for Raul Pena and told them to come down there, get me a search warrant, that I had this Magdaleno Dimas located and I wanted to get him out of the house. And so I guess more than 30 minutes before they showed up there, and so I told Judge Lopez—they had him with them. I said, "All right, you—

Q BY MR. PHILLIPS: Can you speak up just a little bit, Captain?

A "Is it all right to go get him?" And he said yes. And so I went in the house and got him. The first thing we did—it was a subject by the name of Castillo—I called to him myself first time and told him to open the door but he wouldn't—and he wouldn't do it. And then there's a subject by the name of Castillo, I think was his name, that was sleeping in the backyard on a cot. And he came around there and he knew Magdaleno Dimas so well that he called him several times and told him Rangers wanted him. And so didn't come out there, and I said, "Judge, will it be all right to kick this door down?" He said, "All right, go ahead."

Q Well, did you tell him he was under arrest?

A Who?

Q Dimas?

[fol.825]

A After I got in the house, I did. I tried to tell him that out there on the porch, yes sir. He heard it. Couldn't keep from hearing us.

Q All right. Did you know that anyone else was in the house with him?

A At that time?

Q Yes.

A Yes, I knew somebody had been in there because we could see them walking back and forwards through the window. I knew this Cathy Baker was in there. Knew that.

Q How about Benito Rodriguez?

A And knew Benito, right. You could see through the window that they were in there.

Q Did you know the reputation or background of Benito Rodriguez at this time?

A Benito Rodriguez been picked up several times in San Antonio. Charged first one thing and another. I think he was charged with assault with intent to murder. I think he was charged with trying to traffic marijuana. Been charged with carrying brass knucks. I think was charged with carrying a dagger, and first one thing and another.

Q Would you consider him to be dangerous?

A I considered him to be dangerous, yes sir.

[fol.826]

Q All right, did you have any fear when you kicked the door of the house in?

A I didn't have no fear. No use me to lie to you. No, I wasn't scared of him. If I was I wouldn't kicked that dern door down. I don't want to get shot, naturally not. I don't want to get shot. But I had whole lot—if anybody going to get killed, it wasn't going to be me. I'll be perfectly frank with you.

Q Now, you were armed—how were you armed?

A I had a pistol—I don't know whether I was carrying .45 automatic then or single-action. I usually carry that single-action.

Q Did you have a shotgun?

A Yes sir, I had a shotgun in my hand. I kicked the door down. I think Tyle Dawson behind me. I think Raul Pena was there—I don't know whether Roberto Pena—he came in later—and got in the living room.

Q Now just a minute. Let me interrupt you, Captain. Was this a double-barrelled shotgun?

A No sir, single-barrel, automatic.

Q Automatic?

A Yes sir.

Q All right. Now tell us what happened in the house.

[fol.827]

A Got in the house and we went through to the living room. Didn't see anything in there. We turned to the left and went in the bedroom. Wasn't anything there. I opened another little old door that had a barrel blot on it—it wasn't latched from the outside—and so I opened it and there was Benito Rodriguez sitting at the table like this. I said, "Put your hands on the table. Didn't do anything. They didn't move. Did

cance?

Q Now, did that have any significance?

A I didn't know whether they had a gun under there or what they had under there but I wasn't going to take any chances.

JUDGE BROWN: Was your pistol drawn at that time?

, Your Honor, yes.

A I had this shotgun in my hand, Your

JUDGE BROWN: Shotgun?

A Yes.

ou have shot them at

Q BY MR. PHILLIPS: Could you tell me that time?

A I had the shotgun at that time and they didn't move and didn't get up. And I just rapped it up side of the head, [28] didn't hit him too hard. I [fol.828] wanted to or I could have broke his neck if I wanted to. I didn't know, just under arrest, and I hit to be truthful, but I told him he was und

him with that shotgun. He pushed back against the wall, he got up, he and Benito hit that door at the same time and fell down and they both trying to get out of there at the same time.

And Raul Pena and Roberto Pena, they were there. They took Magdaleno Dimas and Benito Rodriguez and put them in the car and went to the courthouse with them.

Q Well, now was Ranger Dawson in there with you at that time?

A Yes, he was with me.

Q And where was he in relation to where you were standing?

A He was right behind me.

Q And how was he armed?

A Do what?

Q How was he armed?

A I think he had a shotgun, a rifle, pistol—I don't know what he had. That's what we usually carry in our car. I wasn't in my car that night but it was a shotgun in this car and I just picked [fol.829] it up.

Q All right. Now, Captain, let me ask you if at any time that you were making any of the arrests that you mentioned or at the time that you went in to arrest Dimas, were you doing so with the intent to destroy this Union?

A I wasn't doing it with the intent to destroy this Union. When I went in to arrest Magdaleno Dimas—I never made an arrest at any time to destroy the Union. I made the arrest of Magdaleno Dimas and Benito Rodriguez trying to prevent a killing or trouble.

Q All right. Were you at any time acting to try to stop their picketing altogether?

A No sir. I don't care. Just like I say, I don't care how much they picket. I never have tried to stop their picket altogether. As long as they picket peacefully 50 feet apart, I don't care.

Q Have you ever agreed with any of the growers up there to try to break up this Union?

A No sir. No sir, I never have.

Q Have you consulted with any of them in any manner on how Union activity might be stopped?

A I haven't talked to them in any manner about Union activity at all. I did have a cup of coffee with

[fols.830-846] * * *

[fol.847] * * * * *

Q Now then, the way you administered this law, you take like 7.18J, those fellows there bunched up within 50 feet of each other, they are violating the mass picketing law right there, aren't they?

A They were arrested.

Q I say that's the way you administer the law?

A Yes.

Q And then 7.18H, there's another bunch of them, they are violating it?

A They are violating it again.

Q And here is—that was 7.18H—and here is another 7.18H—I don't know how we got both of them but that is more violation there, isn't it?

A That is more violation.

* * * * *

[fols.848-898] * * *

[fol.899] * * * * *

JACK VAN CLEVE,
having been first duly sworn on oath, testified, as follows:

DIRECT EXAMINATION

BY MR. CROW:

Q State your name, please, sir.

A Jack Van Cleve.

Q How are you employed, Mr. Van Cleve?

[fol.900]

A By the Texas—State of Texas, Texas Ranger.

Q And how long have you been so employed?

A Eleven years.

Q As a Texas Ranger?

A Yes sir, I've been a peace officer since 1946.

Q All right, sir. Where were you before you became a Texas Ranger?

A I was Deputy Sheriff in LaSalle County.

Q Mr. Van Cleve, directing your attention to the morning of May 11th, 1967, were you stationed on duty at Rio Grande City at that time?

A I was.

Q And prior to 8:00 o'clock that morning had you been to the international bridge at Roma, Texas?

A I had.

Q And what were you doing on that occasion?

A We had information there was a large number of pickets over there and we drove over there to prevent any trouble.

Q And was there any trouble?

A Not at that time, not at the bridge.

Q All right, sir. And then did you leave the bridge?

A Yes, we did.

Q What time did you leave?

A It was just breaking light.

[fol.901]

Q This was in May?

A Yes sir.

Q All right, sir. Then where did you proceed after you left the bridge?

A We started back to Rio Grande City and we followed a bus and a car that was going—they were in front of us. One of these La Casita buses.

Q Why were you following the bus?

A We thought that some of these people might stop these folks on the bus and we were just going to follow it down the road to see whether or not it was stopped.

Q All right. And did as a matter of fact anyone try to stop the bus?

A It was a car—I believe it was a stationwagon with three or four people in it. Would drive in front of this bus in a manner where the bus would have to slow down five or ten miles an hour, and in one instance I believe the bus passed it and as the bus would stop and pick up these workers that was standing along the road, the car would stop and wait for them, and after about the third one of these incidents—I was with Frank Harger—he was driving the car—and Mr. Dawson was in the back seat—we stopped the occupants in this car.

Q All right, sir. Now at the time you stopped it, was [fol.902] it still dark?

A Some of the cars still had their lights on. It was just breaking day. I imagine it was around 6:30 in the morning. Somewhere like that. I didn't look at the time.

Q Was there any traffic on the highway?

A There was lots of traffic going both ways.

Q Who were the occupants of the car that you stopped?

A This Diaz was in the car, was the driver of the car, and Reverand Krueger was in the back. I believe it three. Maybe three or four people in the car besides these two. I'm not—don't remember the number exactly.

Q Did you see the occupants of that car get into the car?

A Yes sir, at the bridge, I did.

Q And what occurred at that time?

A Reverand Krueger called some of those people—motioned to them and hollered and they went over and got in the car and left.

Q You followed it?

A Yes sir.

Q Now, did you call any of the occupants out of the car?

A When we stopped it we asked the driver to get out [fol.903] and asked him for his identification. He didn't have none on him. We searched and couldn't find none on him. And he stated that he didn't have a driver's license.

Q Did anyone else get out of the car?

A Reverend Krueger got out there when we asked the driver of the car to get out. I believe he was sitting in the middle of these people in the back, and he crawled out.

Q And what did Reverend Krueger have to say, if anything?

A I don't remember exactly what he had to say but we told him to get back in the car, that we were questioning this man.

Q And was it at that time that Captain Allee arrived on the scene?

A Yes sir, he did.

Q And how long had you been stopped when he arrived?

A Oh, just a very few minutes.

Q And did you explain to him what had transpired?

A Yes sir, we did.

Q And did he instruct one of you to take him on to Rio Grande City?

A I don't know whether he instruct him to or not but Ranger Dawson and Ranger Harger took him in to [fol.904] Rio Grande City and I went with Captain Allee.

Q You say there was lot of traffic on the road?

A Yes, there was.

Q Did you consider this dangerous conduct on the part of the driver?

A It was. It was traffic hazard and that's the reason we stopped him. We don't ordinarily work traffic. Its not under our line of business.

JUDGE BROWN: Tell me, just in a factual sort of way, what was this car, the Diaz car doing with respect to this bus?

A Sir, it would get up in front of the bus and slow down in a manner where this bus would, ordinarily driving 30 or 40 miles per hour, it would slow down where ther bus have to get down to almost 5 or 10 miles an hour. And one instance the bus pulled out and passed, then the car passed him again and slowed down in front of him again.

JUDGE BROWN: But it did not appear to be trying to drive him to the ditch or to the shoulder?

A No, he wasn't on the side driving in the ditch. He was just interferred with his travel, the way I seen him. He was interferred with the—

JUDGE BROWN: With the speed of the car.

[fol.905]

Q BY MR. CROW: Is there a statute on that?

A Yes, there is for—yes.

Q Did you have any tickets in your car which you could issue to him?

A No, don't issue tickets. As I said we don't ordinarily work traffic. Only where somebody is driving in such a manner that it would endanger his life or the life of someone else that we take in custody and we generally turn him over to the local authorities or Highway Patrol.

Q All right, sir. Now you say that Ranger Harger and Dawson went on in to Rio Grande City, is that correct?

A That's correct.

Q And you went with Captain Allee?

A Yes sir.

Q And where did you go?

A We went down to the bridge at Rio Grande City, where the International Bridge is down there between—I believe its Camargo. Isn't it Camargo?

JUDGE GARZA: Yes.

Q BY MR. CROW: What did you see when you got there?

A When we first got there we saw bunch of these— [fol.906] some pickets standing outside—there's a building there, Custom building and then there's a cyclone wire fence around. They were outside of this fence standing there. Captain Allee and I went on in and I don't believe the bridge was open at that time. And little while after that the cars started coming across and these people out here stopped them on the road. And we drove up there and cleared the road of these people.

Q How did they stop them?

A They were out in front of the car and it was one man had a red flag with a black bird, which I believe it is a Thunderbird, if I'm not—I believe that's what's on this flag—had it dropped over the windshield of that car on the driver's side. Had it on a stick.

Q Could the driver see?

A Sir?

Q Could the driver see?

A No sir, they couldn't and they were shouting something at him. I don't know what they were saying. Whole bunch of talking at the same time. 15 or 20 people there.

Q Did you recognize any of the people that were there in this courtroom?

[fol.907]

A Reverend Krueger was there and Lopez was there and Eugene Nelson was there. That's the only ones I

recognize right now in the courtroom. There might be some more of them now but that's the only one that I remember.

Q All right. So they had the car blocked and they had the flag over the windshield on the driver's side of the automobile. You told them to get out of the road, is that right?

A That's correct.

Q And did they in fact move?

A Yes sir, they got back off the side of the road.

Q All right, and then what happened?

A Captain Allee was engaged in conversation with Eugene Nelson and one or two other men that I don't know, and during this time it was another car—it was a light colored car—I believe to be an old Buick, about a '59—I'm not too good on these cars—came across the bridge with several people in it, and this time Reverend Krueger and this Lopez, David Lopez, started walking out behind Captain—Captain was standing on the edge of the shoulder of the road and these people were here talking to him—it's a narrow road there. I told them to get back off the road [fol.908] and clear the road, and when they didn't I put my hands on each one of them's chest like this and walked them back to the crowd and told them to stay there. I didn't—

Q You put your hands on each of their chests?

A Yes sir, and walked about three or four steps backwards.

Q At the same time?

A Yes sir.

Q And you pushed them back?

A Yes sir, I just pushed them back and told them to get off the road.

Q As you were walking, you said?

A I taken about three or four steps forward and they taken about the same number of steps backward.

Q Now, you heard the testimony of Reverend Krueger concerning this occasion, did you not?

A No sir, I don't believe I did.

Q You didn't hear him describe what transpired?

A I understand he said that I shoved him with tremendous force but I didn't use that.

Q I think he said tremendous force. Did you consider that you were pushing him with tremendous force?

A No sir, I didn't push him hard.

[fols.909-1027] ***

Plaintiffs' Exhibit 7.3A

**IN THE NAME AND BY THE AUTHORITY
OF THE STATE OF TEXAS:**

I, Raul Pena, do solemnly swear that I have good reason to believe and do believe and charge that heretofore, on or about the 12th day of October, A. D. 1966, and before the making and filing of this complaint, in Justice of Peace Precinct No. 1 in the County of Starr and State of Texas, W. L. Chandler, Jr. did then and there unlawfully go into and near a public place to-wit: U. S. Highway No. 83 there situate and did then and there unlawfully use loud and vociferous language, and obscene language in a manner calculated to disturb the inhabitants of such public place, against the peace and dignity of the State.

(Signed) Raul Pena

Sworn to and subscribed on this 12th day of October,
A. D. 1966.

(Signed) Frank R. Nye
Co. Atty. Starr County, Texas

Plaintiffs' Exhibit 7.5AE AUTHORITY

TEXAS:

IN THE NAME AND BY THE AU

OF THE STATE OF TEX. authority of this day

Pena WHO AFTER

BEFORE ME, the undersigned auth oath deposes and says personally appeared Roberto C. Pere and does believe and BEING BY ME DULY SWORN, on oatbout the 3rd day of (that he has good reason to believe an he making and filing of charge) that heretofore, on or about tarr and State of Texas, November, A.D. 1966, and before the md there unlawfully and this complaint, in the County of Starr as did participate in and one William L. Chandler did then and thg and by establishing a willfully, acting concert with others did of the Missouri Pacific abet a secondary strike by picketing an temporary stoppage of picket and pickets at the premises of t employer, the Missouri Railroad Company which caused a tem to labor dispute existed work by two employees of said empl Missouri Pacific Railroad Company where no laf said Missouri Pacific between said employer, the Missouri stoppage by said two Company, and the employees of said pute to which such two Railroad Company; said temporary sto t the peace and dignity employees resulted from a labor dispute employees were not parties, against the of the State.

rt C. Pena

re me this 9th day of

(Signed) Robert C.

Sworn to and subscribed before m November, A.D. 1966.

k R. Nye

ney, Starr County, Texas

(Signed) Frank R. I
County Attorney, S

Plaintiffs' Exhibit 7.5B

**IN THE NAME AND BY THE AUTHORITY
OF THE STATE OF TEXAS:**

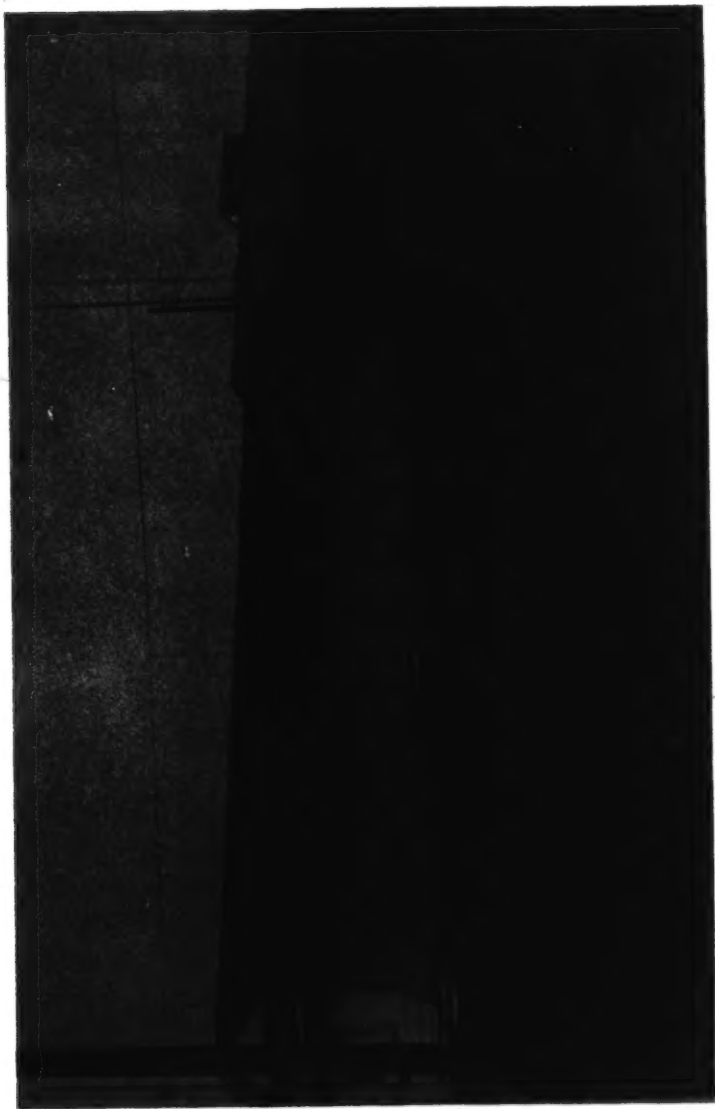
I, Frank R. Nye, Jr. County Attorney of Starr County, in said State, on the written affidavit of Roberto C. Pena a competent and credible person herewith filed in the County Court, in the County of Starr and the State of Texas do present unto said court that on or about the 3rd day of November, A.D. 1966, and before the making and filing of this information, in the County of Starr and the State of Texas, one William L. Chandler did then and there unlawfully and willfully, acting concert with others did participate in and abet a secondary strike by picketing and by establishing a picket and pickets at the premises of the Missouri Pacific Railroad Company which caused a temporary stoppage of work by two employees of said employer, the Missouri Pacific Railroad Company where no labor dispute existed between said employer, the Missouri Pacific Railroad Company, and the employees of said Missouri Pacific Railroad Company; said temporary stoppage by said two employees resulted from a labor dispute to which such two employees were not parties, against the peace and dignity of the State.

(Signed) Frank R. Nye
County Attorney Starr County, Texas

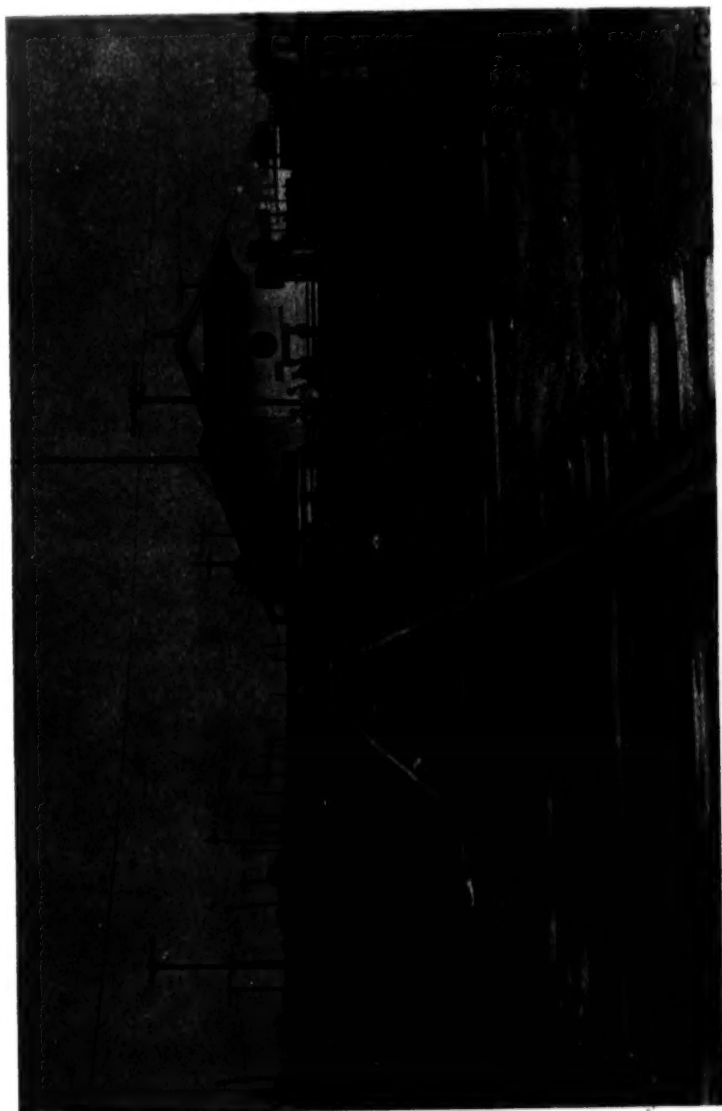
Plaintiffs' Exhibit 7.24



Plaintiffs' Exhibit 7.5C



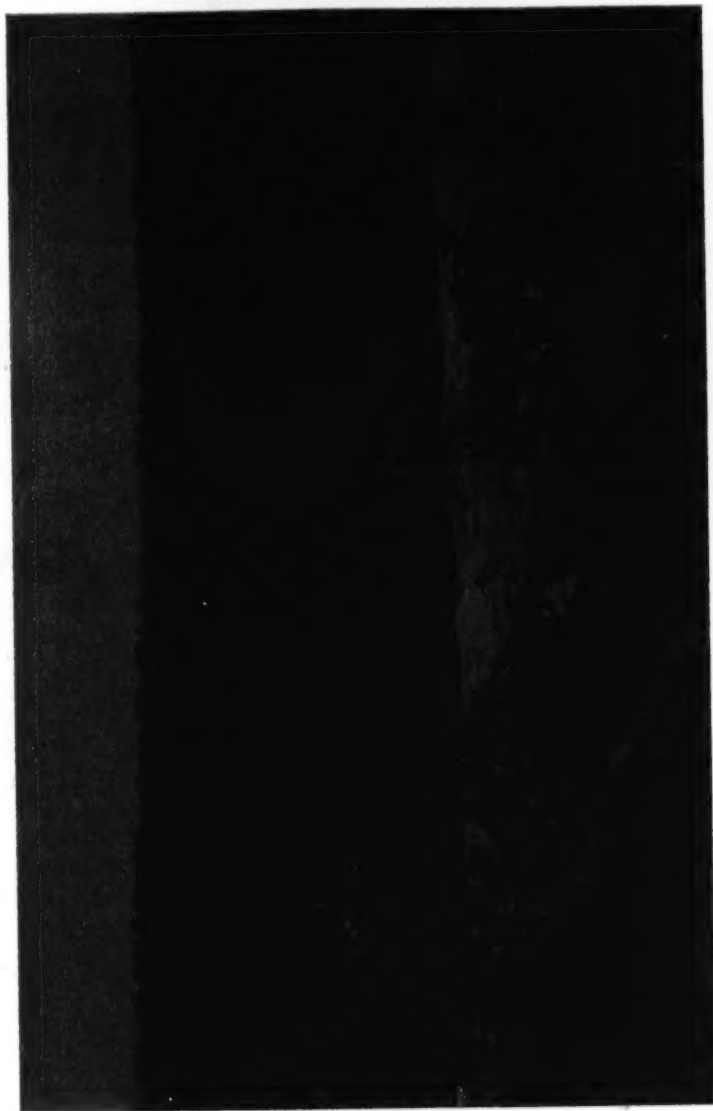
Plaintiffs' Exhibit 7.5D



Plaintiffs' Exhibit 7.1 1B



Plaintiffs' Exhibit 7.13B



Plaintiff's Exhibit 7.17F



Plaintiffs' Exhibit 7.18H

**IN THE NAME AND BY THE AUTHORITY
OF THE STATE OF TEXAS:**

I, Cruz M. Tijerina, Assistant County Attorney of Starr County, in said State, on the written affidavit of Onas Brand a competent and credible person herewith filed in the County Court, in the County of Starr and the State of Texas do present unto said court that on or about the 18th day of May, A.D. 1967, and before the making and filing of this information, in the County of Starr and the State of Texas, one Maria Guadalupe Saenz did then and there unlawfully and willfully: did in concert with others, engage in mass picketing in that this Defendant and Domingo Arredondo, Donato Bazan, Librado de la Druz, Victor Valadez and Magdaleno Dimas were then and there picketing within a radius of fifty feet of the entrance of Trophy Farms and within fifty feet of each other against the peace and dignity of the State.

(Signed) Cruz Tijerina
Ass't. County Attorney
Starr County, Texas

Plaintiffs' Exhibit 7.18L



Plaintiffs' Exhibit 7.20A

Order to Detain

No. 2039 D

Hidalgo County Jail, Edinburg, Texas

[NAME] Medrano, Franco Franciso; (Date) 5-26-67; (Hr.) 10:25 P.M.; (Plc. of Arrest) Mission; [OFFENSE] Unlawfull Assembly; (Booked to) Harger; [DESCRIPTION:] (Age) 46; (Place of Birth) Dallas, Texas; (Date of Birth) 8-2-20; (Race) W.; (Ht.) 5-11; (Wt.) 230; (Eyes) Brn; (Hair) Blk; (Sex) M; (Personal Property) \$41.20 Mex.; (Amount Money) \$32.02; (Jewelry) Keys, W/W; (Weapons) 2-Wallets.

I hereby authorize sheriff or jailer of Hidalgo County or his authorized representative to open all mail and packages directed to me as long as I am a prisoner in said jail.

(Signed) F. F. Medrano

(Signed) Frank Harger
Sig. of Arresting Officer

826 16th N.W.
Add: Washington, D.C.
File No. T-816

Plaintiffs' Exhibit

IN THE NAME AND BY THE
OF THE STATE OF

IN THE NAME AND BY THE UNDERSIGNED authority, on this day
OF THE STATE OF S. A. ROGERS WHO AFTER BEING
BEFORE ME, the undersigned believe and does believe and charge)
personally appeared S. A. ROGERS or about the 26th day of May, A.D.
BY ME DULY SWORN, on oath of the making and filing of this complaint,
has good reason to believe and did algo and State of Texas, DOUGLAS
that heretofore, on or about the R ALLEN KRUEGER, ESTHER
1967, and before the making and EGER and MAGDALENO DIMAS
in the County of Hidalgo and State called defendants, acting in concert
ADAIR, EDGAR ALLEN did then and there participate in
GUEVARA KRUEGER and lg, in that said defendants, acting in
GUERRA, hereinafter called defendant Farm Workers Organizing Committee, an
with each other, did then and there station themselves at and
secondary picketing, in that said Missouri Pacific Railroad Company, a
behalf of United Farm Workers Employer, and did then and there apprise
organization, did then and there as, banners and word of mouth of the
near the premises of Missouri Pacific dispute at and near the premises of
corporation and employer, and there in fact no labor dispute existed
the public by signs, banners and employer and its employees.
existence of a labor dispute at a
said employer where in fact n SECOND COUNT
between said employer and its em

AID AFFIANT, UPON HIS OATH
SECOND COTHER deposes and says that he has good
and does believe and charge that on or

AND THE SAID AFFIANY of May, 1967, and before the making
AFORESAID, further deposes as complaint, in the County and State
reason to believe and does belie.AS ADAIR, EDGAR ALLEN KRUEG-
about the 26th day of May, 196EVARA KRUEGER and MAGDALENO
and filing of this complaint, in
aforesaid, DOUGLAS ADAIR, E -227-
ER, ESTHER GUEVARA KRUE

(Plaintiffs' Exhibit 7.20C, continued)

DIMAS GUERRA, hereinafter called defendants, acting together, did then and there participate in a secondary boycott, in that said defendants, did then and there take concerted action to cause injury and damage to Missouri Pacific Railroad Company, a corporation, for whom they were not employees, by acting in behalf of United Farm Workers Organizing Committee, an organization, and then and there stationing themselves at and near the premises of Missouri Pacific Railroad Company, a corporation, and apprising the public by signs, banners and word of mouth of the existence of a labor dispute at and near said premises, and by standing along and upon the roadway of said corporation's train, thereby interfering with and attempting to prevent the free flow of commerce conducted by said Missouri Pacific Railroad Company, a corporation, against the peace and dignity of the State.

(Signed) S. A. Rogers

Sworn to and subscribed before me this 29th day of May, A.D. 1967.

(Signed) Oscar B. McInnis
Criminal District Attorney,
Hidalgo County, Texas

Plaintiffs' Exhibit 7.21C

**IN THE NAME AND BY THE AUTHORITY
OF THE STATE OF TEXAS:**

BEFORE ME, the undersigned authority, on this day personally appeared Raymond Rochester WHO AFTER BEING BY ME DULY SWORN, on oath deposes and says (that he has good reason to believe and does believe and charge) that heretofore, on or about the 31 day of May, A.D. 1967, and before the making and filing of this complaint, in the County of Starr and State of Texas, one Domingo Arredondo did then and there unlawfully and willfully engage in mass picketing as defined in Article 5154d, Revised Civil Statutes of Texas, 1925, against the peace and dignity of the State.

(Signed) Raymond Rochester

Sworn to and subscribed before me this 31 day of May,
A.D. 1967.

(Signed) Brejedo S. Lopez
Justice of the Peace Pct. 1
Starr County, Texas

Plaintiffs' Exhibit 7.23A

**IN THE NAME AND BY THE AUTHORITY
OF THE STATE OF TEXAS**

THE STATE OF TEXAS IN JUSTICE COURT
County of Starr Precinct No. 1

Before Me, the undersigned authority, this day personally appeared S. A. Rogers who, after being sworn, upon oath deposes and says (that he has good reason to believe and does believe and charge) that one William Chandler, Irene Chandler, and Horacio Perez Carrillo on (or about) the 31st day of May, A.D. 1967, and before the making of this complaint, in Starr County, and State of Texas, did then and there unlawfully and wilfully did then and there engage in mass picketing in that each of them while acting as a picket, they being two or more, did picket at one time within fifty feet of each other, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State.

(Signed) S. A. Rogers

Sworn to and subscribed before me, this 1 day of June,
A.D. 1967.

(Signed) Brijedo S. Lopez
Justice of the Peace, Precinct No. 1,
Starr County, Texas.

Plaintiffs' Exhibit 7.24B

**IN THE NAME AND BY THE AUTHORITY
OF THE STATE OF TEXAS**

THE STATE OF TEXAS, IN JUSTICE COURT
County of Starr Precinct No. 1

Before Me, the undersigned authority, this day personally appeared S. A. Rogers who, after being sworn, upon oath deposes and says (that he has good reason to believe and does believe and charge) that one William Chandler, Irene Chandler, and Horacio Perez Carrillo on (or about) the 31st day of May, A.D. 1967, and before the making of this complaint, in Starr County, and State of Texas, did then and there unlawfully and wilfully did then and there engage in mass picketing in that each of them while acting as a picket, they being two or more, did picket at one time within fifty feet of each other, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State.

(Signed) S. A. Rogers

Sworn to and subscribed before me, this 1 day of June,
A.D. 1967.

(Signed) Brejedo S. Lopez
Justice of the Peace, Precinct No. 1,
Starr County, Texas.

Plaintiffs' Exhibit 7.24C

**IN THE NAME AND BY THE AUTHORITY
OF THE STATE OF TEXAS**

THE STATE OF TEXAS, IN JUSTICE COURT
County of Starr Precinct No. 1

Before Me, the undersigned authority, this day personally appeared S. A. Rogers who, after being sworn, upon oath deposes and says (that he has good reason to believe and does believe and charge) that William Chandler, Irene Chandler, and Horacio Perez Carrillo on (or about) the 31st day of May, A.D. 1967, and before the making of this complaint, in Starr County, and State of Texas, did then and there unlawfully and wilfully did establish themselves as a picket and pickets at and near the premises of the Missouri Pacific Railroad Company, an employer, where no labor dispute dispute existed between such employer and its employees contrary to the statutes in such cases made and provided, and against the peace and dignity of the State.

(Signed) S. A. Rogers

Sworn to and subscribed before me, this 1 day of June,
A.D. 1967.

(Signed) Brejedo S. Lopez
Justice of the Peace, Precinct No. 1,
Starr County, Texas.

The opinion of the court was included and is printed commencing at page 33 of the Jurisdictional Statement. The Memorandum and Order of the court was included and printed beginning at page 87 of the Jurisdictional Statement. The Final Judgment was included and is printed at page 94 of the Jurisdictional Statement.

[fol.F]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FRANCISCO MEDRANO,
KATHY BAKER, DAVID LOPEZ,
GILBERT PADILLA, MAGDALENO
DIMAS, BENJAMIN RODRIGUEZ,
and UNITED FARM WORKERS
ORGANIZING COMMITTEE,
AFL-CIO

Plaintiffs

vs.

CIVIL ACTION NO. 67-B-36

A. Y. ALLEE, JACK VAN
CLEVE, JEROME PREISS,
T. H. DAWSON, DR. RENE
SOLIS, RAUL PENA,
ROBERTO PENA, JIM
ROCHESTER, B. S. LOPEZ,
and S. H. DENSON,

Defendants

BEFORE BROWN, Chief Judge of the United States Court of
Appeals, GARZA, District Judge, and SEALS, District Judge.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

I.

Notice is hereby given that A. Y. Allee, Jack Van
Cleve, Jerome Preiss, T. H. Dawson, and S. H. Denson,
Defendants in the above numbered and entitled cause,
hereby appeal to the Supreme Court of the United States

from the final judgment entered in this cause on December 4, 1972. Said judgment refers to and is based on an opinion entered by the Court on June 26, 1972.

This appeal is taken pursuant to 28 U.S.C., § 1253.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

ROBERT C. FLOWERS
Assistant Attorney General

GILBERT J. PENA
Assistant Attorney General

Attorneys for Defendants

P. O. Box 12548, Capitol Station
Austin, Texas 78711

CERTIFICATE OF SERVICE

I, Gilbert J. Pena, Assistant Attorney General of Texas, attorney for Defendants, do hereby certify that copies of the above and foregoing Notice of Appeal have been deposited in the United States Mail, postage prepaid, on this the 18th day of December, 1972, to the following addresses:

Messrs. Chris Dixie, Robert E. Hall
and George C. Dixie
505 Scanlan Building
Houston, Texas 77002

Mr. Gary Gurwitz
Atlas, Hall, Schwarz, Mills, Gurwitz,
and Bland
P. O. Box 1118
McAllen, Texas 78501

Mr. Luther E. Jones, Jr.
338 Laurel Drive
Corpus Christi, Texas 78404

Mr. Frank R. Nye, Jr.
105 W. Main Street
Rio Grande City, Texas 78582

GILBERT J. PENA
Assistant Attorney General

[Fol.G]

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

May 7, 1973

Gilbert J. Pena, Esq.
Assistant Attorney General
of Texas
P. O. Box 12548, Capitol Station
Austin, Texas 78711

RE: ALLEE v. MEDRANDO
No. 72-1125

Dear Sir:

The Court today took the following action in the above case:

"In this case probable jurisdiction is noted."

Enclosed are memorandums describing the time requirements and procedures under the Rules.

The additional docketing fee of \$50, Rule 52(a) is due and payable.

Very truly yours,

MICHAEL RODAK, JR., Clerk

By

(Mrs.) Helen K. Loughran
Assistant Clerk

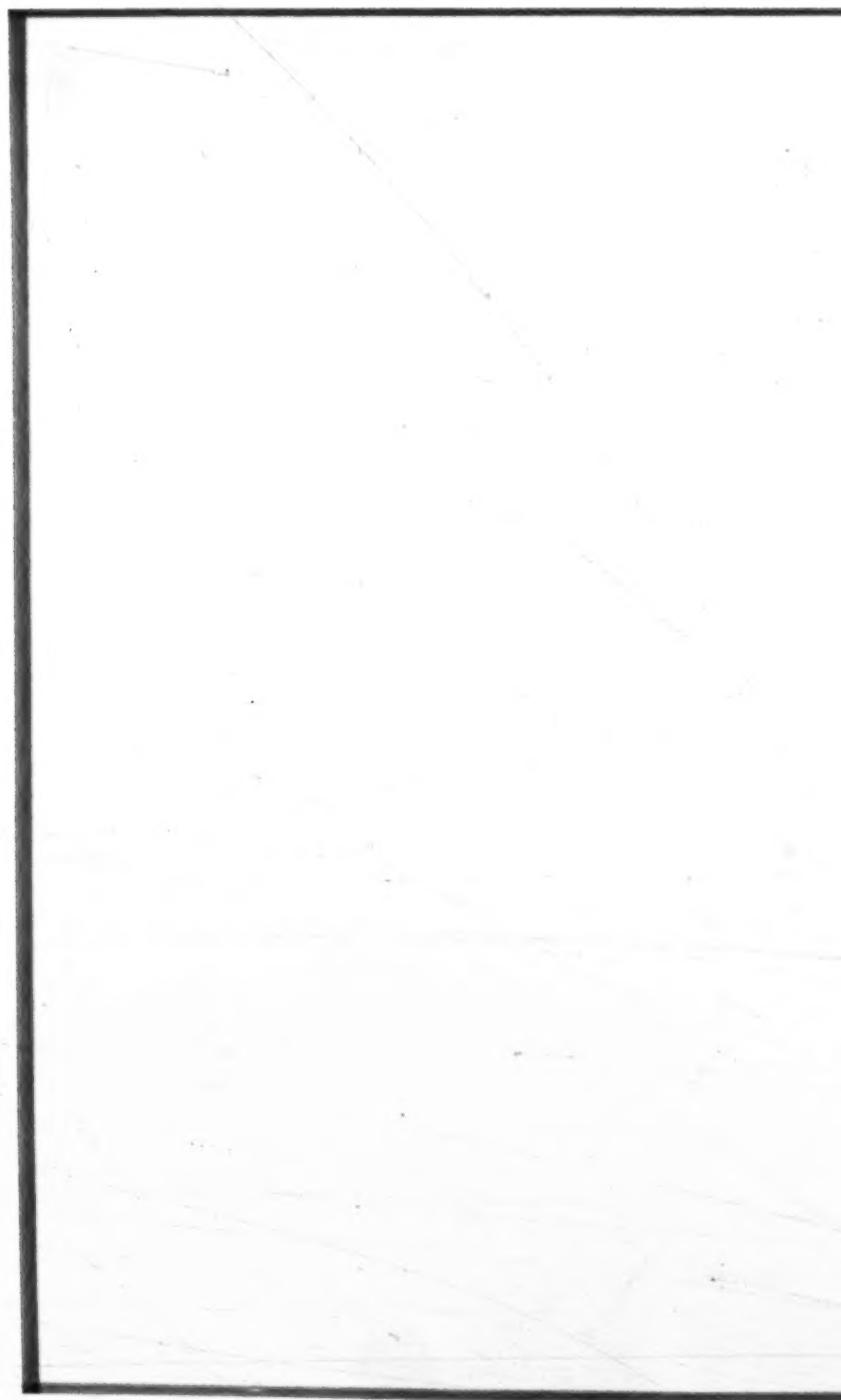
AIR MAIL

Enclosures

cc: William Duncan, Esq.

John B. Abercrombie, Esq.

William D. Deakins, Jr., Esq.



FEB 14

U. S. 72-1125

MICHAEL RODAN

LIBRARY
SUPREME COURT, U. S. 72-IN THE
COURT OF THE UNITED STATES

October Term, 1972

No. _____

IN THE
SUPREME COURT OF TEXAS

October Term

No. _____

A. Y. ALLEE, ET AL,

Appellants,

v.

A. Y. ALLENCISCO MEDRANO, ET AL,

Appellees.

v.

T APPEAL FROM THE UNITED
FRANCISCO MEDRANO THREE-JUDGE DISTRICT COURT
SOUTHERN DISTRICT OF TEXASON DIRECT APPEAL FROM THE
STATES THREE-JUDGE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
JURISDICTIONAL STATEMENT

JURISDICTIONAL

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Attorney General of Texas

JOHN M. BARRON

First Assistant

LARRY F. YORK

Executive Assistant

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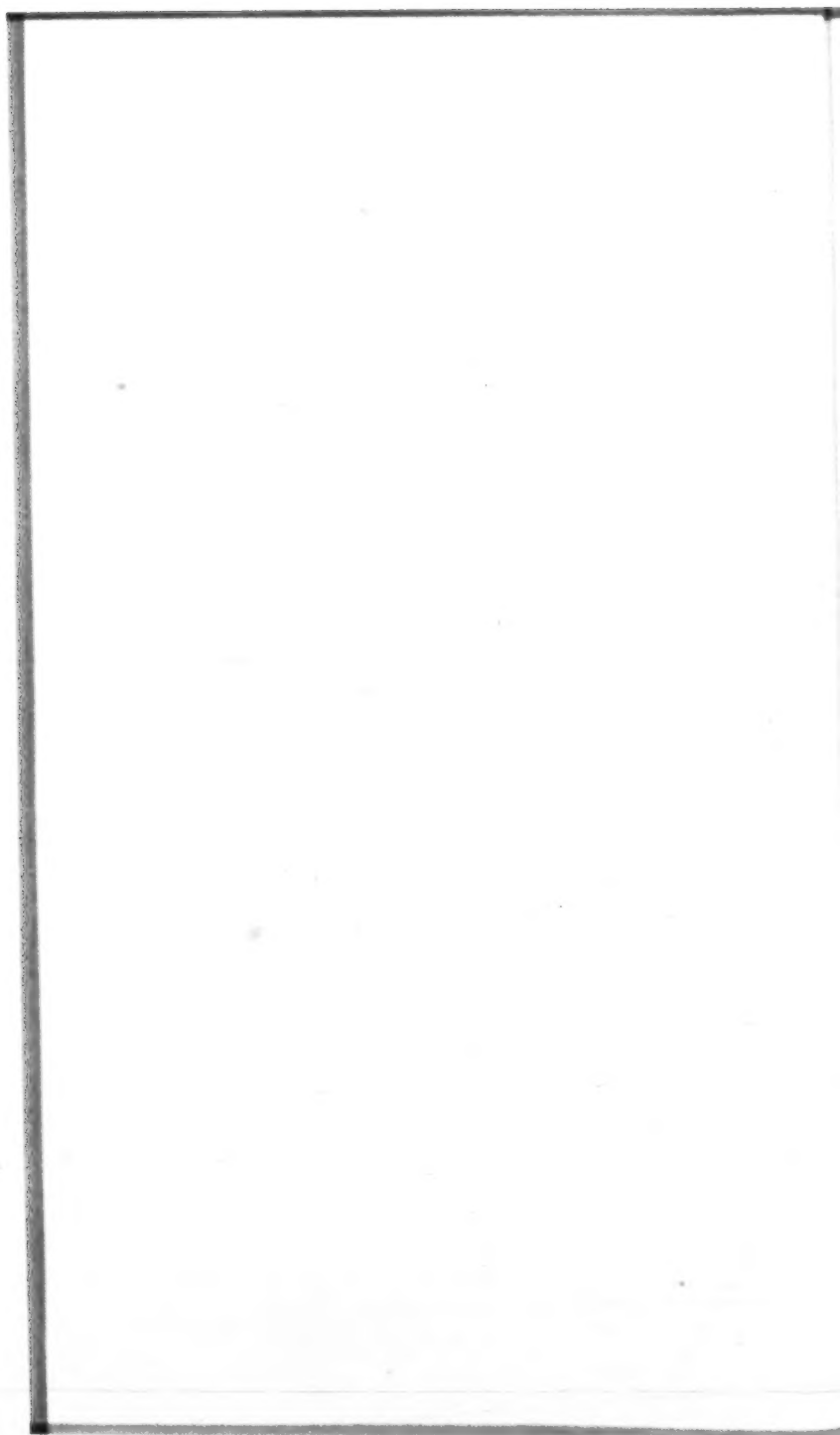
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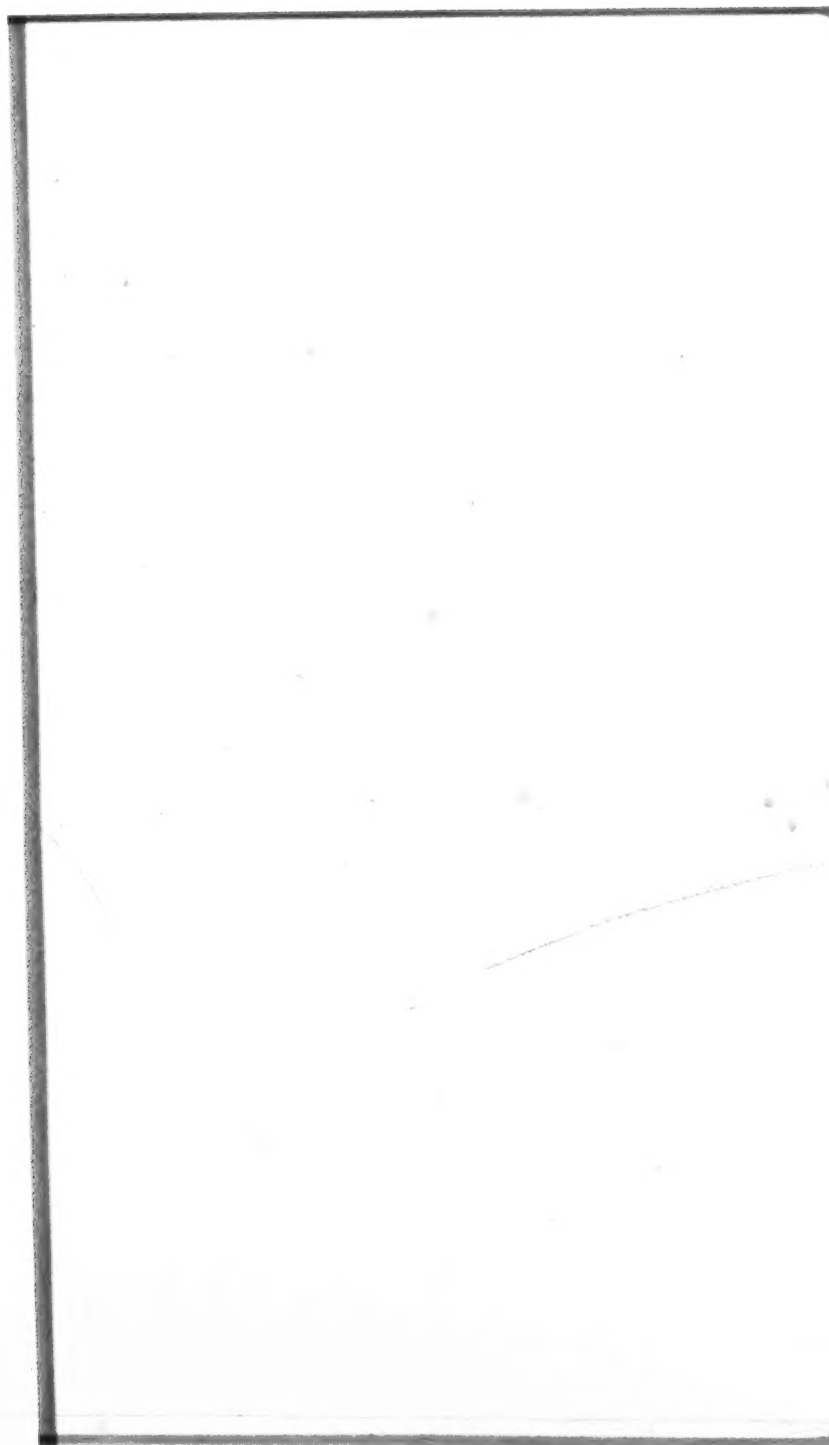
Austin, Texas 78711



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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1972

No.

A. Y. ALLEE, ET AL,

Appellants.

v.

FRANCISCO MEDRANO, ET AL,

Appellees.

ON DIRECT APPEAL FROM THE UNITED
STATES THREE-JUDGE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

Appellants' appeal from the judgment of the United States Three-Judge District Court for the Southern District of Texas, entered on December 4, 1972, declaring that Section 1 of Article 5154d of Vernon's Civil Statutes of the State of Texas, (prohibits "mass" picketing), Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas, (prohibiting "secondary picketing", "secondary strikes", and "secondary boycotts"), Article 784 of the Texas Penal Code, Article 474 of the Texas Penal Code, Article 482 of the Texas Penal Code, and Article 439 of the Texas Penal Code to be unconstitutional in part and enjoining the enforcement of such statutes; and Appellants submit this jurisdictional statement, pursuant to Rule 15 of the Rules of the Supreme Court, to show that the Supreme Court of the United States has jurisdiction of

the appeal and that substantial questions are presented.

OPINION BELOW

The Three-Judge Court below, the United States District Court for the Southern District of Texas, entered an opinion on June 26, 1972, holding several state statutes unconstitutional and that the Appellees were entitled to certain declaratory and injunctive relief against its enforcement by state officers and officials. This opinion is reported at 347 F.Supp. 605, and a copy is attached hereto as Appendix "A". The court below also entered an additional memorandum and order dated December 4, 1972, a copy of which is attached hereto as Appendix "B", and a final judgment was entered on December 4, 1972, a copy of such judgment is appended as Appendix "C".

JURISDICTION

This suit was brought under the provisions of Title 28, United States Code, Sections 1343, 2201, 2202, 2281 and 2285 and Title 42, United States Code, Sections 1983 and 1985; and the First and Fourteenth Amendments to the Constitution of the United States in the United States District Court for the Southern District of Texas seeking declaratory and injunctive relief in an attack on the constitutionality of certain state statutes, and an injunction was sought restraining the officers and officials from enforcing these statutes against Plaintiffs and their class. The complaint also alleged that the Defendants, as state officials acting under color of state law, conspired and deprived Plaintiffs of their civil rights, privileges and immunities protected by the laws and Constitution of the United States. A Three-Judge District Court was formed to

near this cause as provided for by 28 U.S.C. Section 2284. Final judgment of the Court was entered on December 4, 1972, which judgment held that part of Article 5154d of Vernon's Civil Statutes of the State of Texas and part of Article 5154f of Vernon's Civil Statutes of the State of Texas and portions of Article 474, 482, and 439 of the Texas Penal Code were unconstitutional and granted an injunction against its enforcement by state officers, their successors, agents and employees. Notice of Appeal was mailed to that Court on December 18, 1972.

The jurisdiction of the Supreme Court to review the decision of the Three-Judge Court is conferred by 28 U.S.C. Section 1253, 2101(a)(b) and 2281. The following cases sustained the jurisdiction of the Supreme Court to review the judgment of this case on direct appeal: *Florida Lime and Avocado Growers, Inc. v. Jacobson*, 362 U.S. 73 (1960); *Ness Produce Co. v. Short*, 263 F.Supp. 586 (D.C. Or. 1966), affirmed at 385 U.S. 537 (1967).

STATUTES INVOLVED

As noted above, the Three-Judge District Court below held that part of Article 5154d of Vernon's Civil Statutes of the State of Texas and part of Article 5154f of Vernon's Civil Statutes of the State of Texas and portions of Article 474, 482, and 439 of the Texas Penal Code were unconstitutional and granted an injunction against its enforcement by state officers.

The court declared and adjudged that Section 1 of Article 5154d of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, was null and void. The said portion of the statute reads as follows:

"Section 1. It shall be unlawful for any person,

singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

" 'Mass picketing,' as that term is used herein, shall mean any form of picketing in which:

"1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.

"2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions."

The Court declared and adjudged that Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, were null and void. The said portion of the statute reads as follows:

"Section 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

"Section 2.

* * *

"b. 'Secondary strike' shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

* * *

"d. The term 'secondary picketing' shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

"e. The term 'secondary boycott' shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damage to any person, firm or corporation for whom they are not employees, by

"(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

"(2) Picketing such person, firm or corporation;
or

* * *

"(4) Instigating or fomenting a strike against such person, firm or corporation; or

"(5) Interfering with or attempting to prevent the free flow of commerce; or

"(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute."

* * *

"h. The term 'labor dispute' is limited to and means any controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, the controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee

members only of such union, a labor dispute within the meaning of this Act."

The Court declared and adjudged the following portion of Article 474 of the Texas Penal Code to be null and void and restrained its enforcement. Article 474 has since been amended, but it read in pertinent part at the time of the events from which this litigation arose, as follows:

"Whoever shall go into or near any public place, or . . . near any private house, and shall use loud and vociferous, or obscene, vulgar or indecent language or swear or curse, or yell or shriek . . . in a manner calculated to disturb the person or persons present at such place or house, shall be punished by a fine not exceeding Two Hundred Dollars (\$200)."

The Court declared and adjudged that Article 482 of the Texas Penal Code was null and void. Such statute reads as follows:

"Any person who shall in the presence of hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars."

The Court declared and adjudged that Article 439 of the Texas Penal Code was null and void. The said statute reads as follows:

"An 'unlawful assembly' is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof"

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether, as held by the court below, Section 1 of Article 5154d of Vernon's Civil Statutes of the State of Texas is unconstitutional because of impermissible broadness?

2. Whether, as held by the court below, Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas is unconstitutional because of impermissible broadness?

3. Whether, as held by the court below, Article 482 of the Texas Penal Code is unconstitutional because of impermissible broadness?

4. Whether, as held by the court below, Article 439 of the Texas Penal Code is unconstitutional because of impermissible broadness?

5. Whether the court below can properly order injunctive relief, as it did, against peace officers of the Texas Department of Public Safety and the law enforcement officials of Starr County in this case where prosecutions were pending, and whether the court improperly interpreted *Dombrowski v. Pfister*, 380 U.S. 479 (1965), *Cameron v. Johnson*, 390 U.S. 617 (1968), *Younger v. Harris*, 401 U.S. 37 (1971), and its companion cases, in reaching the conclusion that injunctive relief would lie in the present case?

STATEMENT OF THE CASE

The Valley Farm Workers Organizing Committee, AFL-CIO, instituted a strike from June, 1966, until June, 1967, in an attempt to encourage the predominately Mexican-American Farm Workers in Starr

County to join with the union in organizing and forming a union. In pursuit of their objectives, and according to union President Domingo Arredondo, the picketing occurred every day (except Sunday) until its further continuance was enjoined by the state district court. In pursuit of their objectives, strikes were called; and picket lines, rallies and demonstrations were employed to enlist non-union laborers in the common cause. The record reflects that this picketing was accompanied by destruction of property belonging to the farms being picketed, property of employees of the farms and property of the Missouri-Pacific Railroad. There also were acts of violence (shooting at persons and equipment), threats of violence, and display of weapons. Although not a party to this feud, the Missouri-Pacific Railroad Company suffered partial destruction of a bridge by arson, found that objects had been placed on railroad tracks which could derail trains, had rocks thrown at trains, and other incidents which endangered the operation of the railroad to such an extent that they found it necessary to keep a number of special agents on hand to attempt to protect railroad property and in addition to ask assistance from the Texas Rangers in order to secure the safety of their trains.

The strikers attempted to take over the Starr County Courthouse on two or three occasions, intimidated officials and even assaulted a deputy sheriff to the extent of preventing him from making an arrest.

These activities, and the responses triggered thereby, resulted in a controversy characterized on both sides by strong emotions and sometimes violent reactions. During this period supporters of the strike came into open conflict first with local law enforcement agents and later with the Texas Rangers, which lead

to numerous arrests and the initiation of prosecutions under various state laws. From the start of this strike, the record reflects that there was a total disregard for existing laws and that the small group of deputy sheriffs of Starr County became extremely reluctant to make arrests, but were forced to do so by the demands of the farmers that the law be enforced and the property protected. Some of the principle strikers were known to have previously committed serious crimes including murder.

Because of the fear of breakdown of the law enforcement, to a great extent because of a large number of strikers and relatively small number of law enforcement officers, Starr County officials made a strong appeal that the Texas Rangers be sent to preserve order and prevent bloodshed.

Over a period in excess of one year in which picketing occurred daily, only on fifteen occasions were arrests made in Starr County. On two occasions the arrests were made in Hidalgo County and on some occasions in Cameron County. These out of county arrests resulted from an attempted interference with the normal operations of trains by the Missouri-Pacific Railroad in these counties. Destruction of property ended with the stopping of picketing by injunction.

Plaintiffs brought this suit against certain Texas Rangers, officers of the State of Texas, and other public officials of Starr County, seeking declaratory and injunctive relief in an attack on the constitutionality of certain state statutes under which arrests were made, and an injunction was sought restraining Defendants from enforcing these statutes against the Plaintiffs and their class.

THE QUESTIONS RAISED ON APPEAL ARE SUBSTANTIAL

The questions heretofore set out present, Appellants feel, separate and valid issues. However, some may be more conveniently and meaningfully discussed and argued when considered together.

ARTICLE 5154d OF THE REVISED CIVIL STATUTES OF TEXAS IS NOT OVER BROAD SO AS TO ABRIDGE RIGHTS OF FREE SPEECH, ASSEMBLY, AND PETI- TION

The statute involved in no way prohibits or restricts freedom of speech or petition. It does seek to regulate conduct utilized to further the ends of speech and expression.

In view of the attack on these statutes as unconstitutional for over breadth under the First and Fourteenth Amendments of the Constitution of the United States, it is necessary to examine them in view of the background of the case at hand. In May, 1966, the United Farm Workers Organizing Committee attempted to organize farm workers in the Starr County area. Particular emphasis was given in an attempt to organize the workers then working for Las Casitas Farms, Incorporated. There is no evidence to reflect that any member of the Organizing Committee had been employed in recent years by the Las Casitas Farms, Incorporated, nor is there any evidence that any of the employees of the Farm ever joined or attempted to join the United Farm Workers Union. An attempt was also made to organize the workers in the packing shed operation by Las Casitas Farms, Incorporated. A vote, resulting in a tie, was taken under the direction of the National Labor Relations Board, an

equal number of workers favoring the Union as the bargaining agent and an equal number of workers being opposed. During the period of time from May, 1966 and for a number of months in 1967, the Union was very active. Attempts were made to prevent "green card" workers from coming into the United States by blocking the International Bridge between Mexico and the United States by massing in the road adjacent to Las Casitas Farms, Incorporated, and by addressing the farm workers working in the fields on Las Casitas Farms through loud speakers located on adjacent property. During this period of time, there were alleged threats of violence reported in local newspapers and a Missouri Pacific bridge was burned. The Union organizer was reported to have threatened the Texas Rangers. Not only were roads obstructed in the vicinity of Las Casitas Farms, but on one occasion, a large number of individuals gathered in Mission, Texas, in order to prevent the passage of a Missouri-Pacific train carrying cantaloupes which had been originally grown on Las Casitas Farm property. Organizers were alleged to have used loud and obscene language in attempts to threaten workers in the field. One of the members of the Committee who had previously been convicted of murder was seen in possession of a rifle and subsequently arrested. Because of the acts of violence and disturbances created by the pickets, an order was obtained through a state district court prohibiting further picketing.

Article 5154d prohibits "mass" picketing. It was designed to prevent the massing of pickets and the regulation of picketing activities without prohibiting them. Pickets were prevented from physically obstructing ingress and egress to any premises, but were allowed to have sufficient number, in the opinion of the Legis-

lature, to convey the message that the premises in question were being picketed and the reasons for the dispute.

This Statute in Section 2 forbids the use of insulting, threatening or obscene language. Section 3 prohibits picketing accompanied by slander, libel, or public display or publication of oral or written misrepresentations and Section 4 prohibits picketing for the purpose of securing a disregard, breach, or violation of a valid subsisting labor agreement. Section 4a prohibits activity after court of competent jurisdiction had enjoined such picketing.

The State has long been recognized to have the right to regulate picketing but not to prohibit it. See *Thornhill v. Alabama*, 310 U.S. 88, 60 S. Ct. 736; *Building Service Employees International Union Local 262 v. Gazzam*, 339 U.S. 532, 70 S.Ct. 784; *Giboney v. Empire Storage and Ice Co.*, 336 U.S. 490, 69 S.Ct. 684; *Bakery and Pastry Drivers and Helpers Local 802 v. Wohl*, 315 U.S. 769, 62 S.Ct. 816; *Carpenters and Joiners Union, Etc. v. Ritters Cafe*, 315 U.S. 722, 62 S.Ct. 807; *Milkwagon Drivers Union, etc. v. Meadowmoore Dairies*, 312 U.S. 61 S.Ct. 552; *International Union of Operating Engineers v. Cox*, 219 S.W.2d 787 and *Geissler v. Goussoulis*, 424 S.W.2d 709. Constitutional guarantees of freedom of speech do not grant an unabridged license to engage in any type activity because a part of such activity is a dissemination of ideas. Mr. Justice Black stated in *Giboney, et al v. Empire Storage and Ice Company*, supra, page 502:

"But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."

In the case of *Cameron, et al v. Johnson, etc., et al*, decided by the United States Supreme Court on April 22, 1968, 390 U.S. 611, 88 S.Ct. 1335, Mr. Justice Brennan stated that picketing and parading were subject to regulation even though intertwined with expression and association citing *Cox v. Louisiana*, 379 U.S. 559, at page 563. He found a Mississippi statute known as "The Anti-Picketing Law" to be constitutional stating that the statute does not prohibit picketing "so intertwined unless engaged in in a manner which obstructs or unreasonably interferes with ingress or egress to or from the courthouse. Prohibition of conduct which has this effect does not abridge constitutional liberty 'since such activity bears no necessary relationship to the freedom to . . . distribute information or opinion.' " *Snyder v. State*, 308 U.S. 147, 161.

In *Cox v. Louisiana*, supra, page 564, Mr. Goldberg stated that the statute in question is:

" . . . a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and . . . the fact that free speech is intermingled with such conduct does not bring with it constitutional protection."

The Legislature of the State of Texas has the duty of protecting the public of this State against unlawful conduct and in safeguarding the tranquility of its inhabitants. In exercising its discretion in this regard, the Legislature concluded that the idea sought to be disseminated could clearly be projected by not more than two pickets located within fifty feet of any entrance of the premises being picketed or within fifty feet of each other. Unless it is the intent of pickets to intimidate, the public can be made legally aware of grievances sought to be corrected within the limits of the picketing permitted by the Statute. Courts of other

states have not been reluctant to limit the number of pickets allowable. See *Rice & Holman v. United Electrical Workers*, 65 A. 2d 638 (New Jersey Superior Ct. 1949); *Standard Appliances v. Korman*, 111 N.Y.S. 2d 783, 786 (New York S.Ct. 1952); *Tarrytown Road Restaurant, Inc. v. Hotel and Restaurant Employees*, 115 N.Y.S. 2d 626, 631 (New York S.Ct. 1952); *Stern-Fair Corporation v. Moving Pictures Operators*, 139 N.Y.S. 2d 145, 150 (New York S.Ct. 1955); *Ballas Egg Products Company, inc. v. Meat Cutters*, 160 N.E. 2d 164 (Ohio Ct. Com.Pl. 1959).

Although the pickets are limited in number, the Legislature has likewise found the placing of obstructions either in the person of the pickets or in the placing of vehicles or other physical obstructions to constitute mass picketing. The cases above cited clearly give the Legislature the right to regulate in this field. Without going over the definition line by line, we also present that the term "picket" and the term "picketing" have been defined clearly and concisely so that anyone affected by the Statute will know if he comes within the category of the definition.

In a case decided in 1968 by the San Antonio Court of Civil Appeals, *Geissler v. Goussoulis*, 424 S.W.2d 709, the court stated:

"We cannot agree that the numbers and distance formula must fall because of vagueness. It embodies a precise formula and does not leave it to law enforcement officers to define the conditions under which persons wishing to disseminate the facts of a labor dispute may use the streets and sidewalks. Any person wishing to engage in picketing activities can determine, by reading the statute, exactly what is prohibited." Page 711

The Court continued:

"... We have carefully examined the record before us and find nothing to justify the conclusion that, as applied to the facts of this case, the regulation operates as an unconstitutional abridgment of the right of freedom of expression. The physical facts here are such that two pickets can be stationed at every entrance to the cafe without violating the statute, so that the dissatisfied employees can communicate their message to all persons who attempt to enter the restaurant, be they prospective customers, employees or suppliers."

The latest pronouncement on the constitutionality of 5154d, Vernon's Ann.Civ.St. is found in *Sabine Area Bldg. T.C., AFL-CIO v. Temple Assoc. Inc.*, 468 S.W.2d 501, where on May 27, 1971, the Court of Civil Appeals of Texas, at Beaumont reaffirmed the holding in *Geissler v. Goussoulis*, 424 S.W.2d 709 (Tex.Civ. App.—San Antonio, 1967, error ref. n.r.e.).

With respect to the second paragraph of Article 5154d §1, the three-judge court clearly misread the language of the statute as well as misread the holding of this Court in *Cameron*, supra. The Mississippi statute upheld by this Court in *Cameron* prohibited "picketing * * * in such a manner as to obstruct or unreasonably interfere with free ingress or egress..." (emphasis added) (390 U.S. at 616). The Mississippi statute is therefore clearly *broader* than the challenged Texas statute which, in the paragraph under discussion, prohibits pickets which constitute an actual obstacle "either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions". This limiting language contained in the statute is certainly sufficient to withstand any attack for overbreadth, and clearly is more narrowly drawn than the constitutional Mississippi statute which, in addition to the actual obstruction

here prohibited, prohibits unreasonable interference with free ingress or egress.

Article 5154d is clear, concise and is a valid exercise of legislative discretion under its inherent police power. We, therefore, contend that it is constitutional in every respect.

ARTICLE 5154f CLEARLY DEFINES CONDUCT PROHIBITED AND IS NOT UNCONSTITUTIONAL BECAUSE OF IMPERMISSIBLE BROADNESS.

Article 5154f of the Revised Civil Statutes of Texas prohibits secondary picketing, secondary strikes, and secondary boycotts. It carefully defines the terms used in the act and specifically delineates those actions prohibited. The right of the State to adopt such policy is well settled.

This Honorable Court in *Carpenters & Joiners Union of America, et al, v. Ritter's Cafe, et al*, 315 U.S. 722, 728 (1942) stated as follows:

"In forbidding such conscription of neutrals, in the circumstances of the case before us, Texas represents the prevailing, and probably the unanimous, policy of the states. We hold that the Constitution does not forbid Texas to draw the line which has been drawn here. To hold otherwise would be to transmute vital constitutional liberties into doctrinaire dogma. We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants.' *Thornhill v. Alabama*, 310 U.S. 88, 103-04.

"It is not for us to assess the wisdom of the policy underlying the law of Texas. Our duty is at an end when we find that the Fourteenth Amendment does not deny her the power to enact that policy into law."

In that case it was held that the Texas Anti-Trust Laws could be applied to secondary picketing. Rather than rely on the generalities of the Anti-Trust Laws the Texas Legislature spoke specifically to this problem in 1947, adopting the statute here challenged.

It is true that in a number of instances, the Supreme Court of Texas has held that the statutes, if applied to a particular fact situation, would be unconstitutional. See *International Union of Operating Engineers v. Cox*, 219 S.W.2d 729 (1949), but the Texas Supreme Court has never held that Article 5154f was unconstitutional. The Supreme Court of the State of Texas, however, has not attempted to define or limit the application of the statute and we know of no convictions thereunder which have been appealed to the Texas Court of Criminal Appeals. The highest criminal court in the State has not had an opportunity, therefore, to interpret or define or determine the constitutionality of Article 5154f, as applied in criminal cases or in particular to a fact situation of the nature involved herein.

The Texas courts have also been alert to the possibility that the statute might be applied unconstitutionally in a particular case. In *Ex Parte Henry*, 147 Tex. 315, 215 S.W.2d 588 (1948), it held that peaceful picketing at the site of the primary dispute was constitutionally protected, though its effect was to induce the railroad with which there was no dispute to refuse to spot cars on the siding. In that case the court said an injunction could have issued if there were physical obstruction of the railroad by the pickets.

Even if the activities of the picketers was constitutionally protected, this is a matter to be raised defensively when the participants are prosecuted in a State court. The Texas courts have demonstrated that they will lend a sympathetic ear to any claim of unconstitutional application of Article 5154f. Even if these persons were arrested when they should not have been, this is not enough to establish a willful deprivation of constitutionally protected rights, as required by *Cruz v. United States*, 325 U.S. 91 (1945), and *Williams v. United States*, 341 U.S. 97 (1951).

The three-judge district court held Article 5154f unconstitutional in its analysis of the three operative concepts defined in §2, to wit: 2(d) "secondary picketing" 2(b) "secondary strike" and 2(e) "secondary boycott". We will discuss the definitions in this order, following that of the analysis of the court below.

Section 2(d) defines "secondary picketing" as "the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute . . . exists between such employer and his employees". The rationale of the court below in finding this definition overbroad is "It clearly relies on the absence of an employer-employee relationship and this is impermissible" (347 F.Supp. at 627) under the case of *American Federation of Labor v. Swing*, 312 U.S. 321 (1941). The definition of secondary picketing, however, does not turn exclusively upon the absence of an employer-employee relationship: essential to the definition in 2(d) is the definition of "picket" set forth in 2(c), and completely ignored by the district court in its analysis. Certainly it is not the absence of an employer-employee relationship wherever found that is impermissible: if so no secondary picketing prohibition could be valid. It is the reliance of a statute exclusively

upon the absence of such relationship which is impermissible. The Texas statute requires that the absence of this relationship be accompanied by a person stationed for one of the express purposes enumerated in 2(c). As this Court stated in *International Brotherhood of Teamsters v. Vogt*, 354 U.S. 284, 293 (1957), after reviewing the development of the law in this area:

"This series of cases, then, established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy."

The enumerated purposes set out clearly and precisely in the 2(c) definition of "picket" are statements of public policy, the enforcement of which is sought by this statutory prohibition of secondary picketing made in full conformity with the *Vogt* doctrine announced by this Court.

The rationale of the court below in invalidating the §2(b) definition of "secondary strike" is wholly inadequate even if accepted as accurate, which it is not. On the basis of the "aid or abet" clause of §1, the court ruled all of §2(b) unconstitutionally overbroad because of possible inclusion of protecting picketing. Even if this reasoning were sound it would at most justify holding the "aid or abet" clause invalid as applied to §2(b). However the reasoning itself is fundamentally unsound. Any picketing which would constitute aiding and abetting a secondary strike can be constitutionally prohibited by the Texas statute under the above quoted doctrine announced in *Vogt*. Prohibition of secondary strikes is certainly within the area of permissible state public policy, and *Vogt* expressly

permits prohibition of picketing "aimed at preventing effectuation of that policy".

Turning now to the §2(e) definition of "secondary boycott", the "aid or abet" argument of the court below is fallacious for the same reasons as argued above with respect to secondary strikes. The court hinges its alternative argument for invalidating §2(e) upon a wholly inadequate analysis of the "injury or damage" phrase:

"Simply stated, Texas has prohibited secondary boycott picketing, the purpose of which is either to cause 'injury or damage' or to encourage acts which will cause 'injury or damage'. These are broad terms; they will not point to specific evils."

* * *

"The evil here is 'damage or injury' of any character or degree no matter how slight or subtle". 347 F.Supp. at 628.

The court appears to have ignored the greater portion of §2(e) which sets forth in detail the specific manner by which the damage or injury must be inflicted, each of which constitutes a statement of legitimate public policy sought to be protected by this legislative enactment, to wit:

"(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

"(2) Picketing such person, firm or corporation; or

"(3) Refusing to handle, install, use or work on the equipment or supplies of such person, firm or corporation; or

"(4) Instigating or fomenting a strike against such person, firm or corporation; or

"(5) Interfering with or attempting to prevent the free flow of commerce; or

"(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute."

It is the contention of Appellant that these limiting clauses of §2(e) spell out specifically state public policy prohibiting secondary boycotts, and that as such, the State may also prohibit picketing aimed at preventing effectuation of that policy, in accordance with the *Vogt* doctrine.

It is therefore clear that the rationale of the court below is inadequate to support its ruling of unconstitutionality with respect to Article 5154f, and furthermore that the reasoning of the court below is in error even to that limited extent to which it would hold minimal portions of that statute unconstitutional. Article 5154f is clear, concise and is a valid exercise of legislative discretion under its inherent police power. We therefore contend that it is constitutional in every respect.

ARTICLE 482 OF THE TEXAS PENAL CODE IS NOT UNCONSTITUTIONAL FOR OVER BREADTH.

Article 482 provides as follows:

"Any person who shall in the presence of hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars."

This Honorable Court in *Chaplinsky v. State of New*

Hampshire, 315 U.S. 568, 62 S.Ct. 315, had before it for interpretation the New Hampshire abusive language statute. There this Court stated at page 571:

"Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.' *Cantwell v. Connecticut*, 310 U.S. 296, 309, 310, 60 S.Ct. 900, 906, 84 L.Ed. 1213, 128 A.L.R. 1352."

That Article 482 of the Texas Penal Code which prohibits the use of abusive language is constitutional is settled by this unanimous decision in *Chaplinsky*, supra, upholding a statute with a similar purpose but couched in far more general terms. See also the Arkansas statute, very similar in its language to this Texas statute, noted approvingly by this Honorable Court in *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 138 n. 5 (1957).

ARTICLE 439 OF THE TEXAS PENAL CODE
IS NOT UNCONSTITUTIONAL.

Article 439 reads as follows:

"An 'unlawful assembly' is the meeting of three or more persons with intent to aid each other by violence or in any manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof."

If Article 439 stood alone it might be subject to challenge on grounds of unconstitutional indefiniteness, though even that challenge probably would fail. Insofar as it makes it criminal for three or more persons to aid each other "to commit an offense" it is merely a conspiracy statute. Cf. 18 U.S.C. Section 371. It also prohibits such an assembly "illegally to deprive any person of any right" the reference to the rights that are protected is surely not specific, though it is relevant to note that 18 U.S.C. Section 242, making it criminal to deprive any person "of any rights, privileges, or immunities secured or protected by the Constitution or Laws of the United States", has been upheld against challenge on the ground of vagueness. *Williams v. United States*, 341 U.S. 97, 100-101 (1951). The word "illegally" may well be the key, since it is not a conspiracy to deprive a person of a right that is prohibited, but only a conspiracy illegally to deprive him of a right. Thus this portion of the statute makes criminal a conspiracy to do something that the law of the State, including the civil statutes and the common law, prohibits.

For the purposes to this case Article 439 must be read together with Article 449. Taking these statutes together, as the Texas courts have consistently done, they say:

An "unlawful assembly" is the meeting of three or more persons with intent to aid each other by violence or in any other manner . . . to prevent any

person from pursuing any labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another

...

This expresses in words of common understanding the kind of conduct by a group of persons that is prohibited by the statute. The notion that a group of persons have a constitutional right to prevent someone else from working at his employment is hardly likely to be the law. The Texas Court of Criminal Appeals has given these statutes very narrow interpretations and required that the indictments set out in detail the matter with which the persons are actually charged. For example, *Blackwell v. State*, 18 S.W. 676, the court said that if the indictment or information throughout did not show for what purpose the rioters assembled, the information was insufficient. In the case of *Follis v. State*, 40 S.W. 277, it was held that an indictment for unlawful assembly to prevent a party by violence from having a social gathering or dance at his house should allege that such party has a house and was giving or about to give a social gathering or dance. In *Luter v. State*, 22 S.W. 140, the court held information was defective under Article 449 for failure to set forth the nature of the "lawful employment."

In *Briscoe v. State*, (1961), 341 S.W.2d 432, the indictment was held defective because there was no notice as to whether the State would rely on intent by violence to disturb the victim and deprive him of his right to operate a lunch counter or would rely on proof on an intent to deprive him of such right by some means other than by the use of violence. The attention of the Court is also directed to *Tucker v. State*, (1961), 341 S.W. 433, and *Johnson v. State*, (1961), 341 S.W. 2d 434. Likewise in *Jones v. State*, (1962), 355 S.W.2d

727, the mere attempt to procure service at a railroad terminal without an act of violence or other violation of the law would not justify conviction.

We recognize that the right of lawful assembly is constitutionally protected. The statute is not directed at a lawful assembly, but at the unlawful one which is not constitutionally protected. See *Cox v. Louisiana*, 379 U.S. 559. It is well settled that courts are inclined to adopt that reasonable interpretation of a statute which moves it furthest from possible constitutional infirmity. *Kovacs v. Copper*, 336 U.S. 77 (1948); *Cox v. Louisiana*, supra. It has likewise been held that even a lawful assembly is subject to state regulation. *Poulos v. State of New Hampshire*, 345 U.S. 395 (1953). In the latter case the court stated at page 405:

"The principles of the First Amendment are not to be treated as a promise that everyone with opinions or beliefs to express may gather around him at any public place and at any time a group for discussion or instruction . . . it has indicated approval of reasonable non-discriminatory regulation by governmental authority that preserves peace, order and tranquility without deprivation of First Amendment guarantees of free speech, press, and the exercise of religion. When considering specifically the regulation of the use of public parks, this court has taken the same position."

In the case of *Hughes, et al v. Superior Court of California*, 339 U.S. 460, 70 S.Ct.Rep. 718, the Court held that industrial picketing was subject to the control of a state if the manner in which the picketing was conducted or the purpose which it seeks to effectuate gives ground for its disallowance. The Court, however, held:

"It has been amply recognized that picketing, not being the equivalent of free speech as a matter of

fact, is not its inevitable legal equivalent. Picketing is not beyond control of a State if the manner in which the picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance."

See cases cited therein at page 466.

Texas has a "right to work law". Article 5207a, Vernon's Annotated Statutes, and similar statutes have been held constitutional by the Texas and the United States Supreme Courts. *Construction and General Labor Union v. Stephenson*, (Tex.Sup. 1950) 225 S.W.2d 958, *Building Service Employees Union, etc. v. Gazzan*, supra. To hold that the right to work law is constitutional and to hold that the State cannot declare illegal an assembly whose purpose is to prevent a person from pursuing his labor, occupation, or employment or intimidate him from following his daily avocation or to interfere in any manner with the labor or employment of another would make the right to work statute meaningless.

We submit that the statute in question is not unconstitutional for over breadth as the court below found.

THE COURT BELOW IMPROPERLY ORDERED INJUNCTIVE RELIEF AGAINST PEACE OFFICERS OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY AND THE LAW ENFORCEMENT OFFICERS OF STARR COUNTY IN THIS CASE WHERE PROSECUTIONS WERE PENDING IN THE STATE COURTS.

The effect of the holding in the court below was to require federal intervention and to threaten state prosecutions. The order of the court coupled with the injunction, prevents enforcement of the statutes, either by criminal complaint or civil petition, regardless of

the peaceful or non-peaceful nature of the picketing activities.

The Appellants, since the inception of this case, have contended that the Three-Judge Federal Court below lacked the power to enjoin pending state prosecutions.

The witnesses presented by Appellees in defense of their position and their contentions that the criminal charges pending against them were maliciously filed are supported only by the testimony of those who are charged with the commission of the crime. The case was brought about as an effort on the part of the Appellee to kill charges pending against them in state court by federal intervention rather than by allowing a jury of their peers to determine the questions of guilt or innocence as is provided by the Constitution of the United States and the State of Texas. It is important to note in this case that Appellees have not contented that the Appellants in the future will attempt to again institute proceedings against them under void statutes or because they wish to harrass Appellees by filing charges with no expectations of obtaining convictions. The record reflects a very good basis for Appellees not advancing this theory. The president of the Farm Workers Union, Domingo Arredondo, one of the Appellees herein, frankly states that picketing continued until it was stopped by injunction. It was not the arrest that "chilled" Appellees' alleged constitutional right and destroyed the strike. Until and unless the existing injunction is dissolved or the case reversed on appeal, Appellees cannot engage in further picketing as prior picketing was found to be "coupled with violence".

There have been no arrests or threatened arrests of any of the Appellees by any of the Appellants since the

institution of this lawsuit which is approximately during a period of four years.

The Three-Judge Court below relied on *Dombrowski v. Pfister*, 380 U.S. 479, 483-485 (1965), *supra*, as authority for entering the arena of state prosecution at the early stages. This reliance apparently ignored the decision of this Court in *Cameron v. Johnson*, 390 U.S. 617 (1968).

Any notion that *Dombrowski*, *supra*, had opened wide the door to federal court intervention was dispelled in *Cameron*, *supra*. In *Dombrowski*, *supra*, the Court there pointed out that the statutes challenged regulated "expression itself", rather than, as in *Cameron*, *supra*, statutes regulating "conduct which is intertwined with expression". In this respect our case is like *Cameron* and unlike *Dombrowski*. Further it is important to note that in *Dombrowski* the court did not need to decide whether the Anti-Injunction Act, 28 U.S.C. Section 2283, bars an injunction against state criminal proceedings sought under the Civil Rights Act, because it found that the State's proceedings had not been commenced when the federal action was begun. This was also the situation in *Zwickler v. Koota*, 389 U.S. 241 (1967). It was not the situation in *Cameron*, where the arrests were made and charges filed before the federal action began. It is not the situation here. Unless and until the Supreme Court rules to the contrary, actions under the Civil Rights Act should not be regarded as an exception to the Anti-Injunction Act, as indeed has been held by many courts of appeals.

The court below misapplied *Younger v. Harris*, 401 U.S. 37 (1971). *Younger* teaches that federal courts may not enjoin pending state court criminal prosecu-

tion unless the applicant makes a showing of irreparable harm which is both great and immediate. Disclaiming any intent to catalogue exhaustively the situations where irreparable harm can be said to exist, this Court in *Younger* did, however, discuss two fact circumstances which would justify federal court intervention. First, an injunction would be granted by the federal district court to prevent a prosecution undertaken for a purpose of harassment and in bad faith without any expectations of securing a valid conviction. Secondly, the court suggested that, even in the absence of the usual requisites of bad faith and harassment, a "statute might be (so) flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whom ever an effort might be made to apply it," that federal injunctive relief would be available to prevent attempts to prosecute under it. In any case, the harm required to be shown must be comparable to the harm present in the situation described by the court. *Younger* also holds that the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution cannot, by itself, be considered irreparable damage, as that term was used by the court.

The evidence does not reflect that either the Starr County officials or the Texas Rangers, in attempting to enforce the statutes in question knew or had cause to believe that any particular statute was unconstitutional. Certainly, in the absence of any state court holding any of these statutes to be unconstitutional prior to the time of the arrest of the Appellees during the strike, the law enforcement officers, the group from Starr County as well as the Texas Rangers, who are not versed in constitutional law cannot be expected to

know that such statute might be later struck down in federal court.

In the court below Appellees claimed that the officials of Starr County and the Texas Rangers were biased and merely arrested the Appellees to destroy the union. This contention is utterly ridiculous. Even if the officers had hoped to stop union activity, which is untrue, the president of the union testified that picketing continued until the union was enjoined in state court from further picketing because the picketing had been coupled with actual violence.

Members of the union are not above the law merely because of the union membership. The testimony by the various defendants clearly proves that violations of law had occurred prior to each arrest. Appellees' position below was that the law enforcement officers were attempting to destroy the union by arrests on one hand and by criticising the law enforcement officers for not filing complaints on various other offenses and contending that this action of the law enforcement officials indicated that Appellees were not violating other statutes. Certainly if the law enforcement officials were attempting to destroy the union by arrests, arrests would have been made almost daily as the picketing occurred daily. In addition, complaints could have been filed against those arrested under every possible statute where charges could be brought. The true inference to be drawn from the facts that other charges were not filed was that the officers, at the time the arrests were made, were merely trying to uphold the laws of the State of Texas and preserve the peace.

It is submitted that injunctive relief was not proper under the facts and circumstances as revealed above. It could not be presumed that the state courts will not

accord defendants their full federal and state constitutional rights in state court trials. *Walker v. Birmingham*, 388 U.S. 307, 319 (1967); *Harris v. N.A.A.C.P.*, 360 U.S. 167 (1959). The mere possibility of an erroneous application of constitutional standards will not justify federal courts disrupting state proceedings. *Cameron v. Johnson*, supra; *Dombrowski v. Pfister*, supra. The state courts, presumably, would have construed the various statutes involved and applied them in keeping with constitutional principles, and the court below should have assumed that the state courts would do so.

"Principle of comity, of cooperation and of rapport between the two sovereigns," *Texas v. Payton*, 390 F.2d 261, 270 (5th Cir. 1968), strongly suggests that criminal law enforcement should be left to the states, and that except in the most extraordinary circumstances a federal court should not interfere by injunction with pending state proceedings. Deference by the federal courts to the states in this area recognizes that the "state court at least co-equal with federal courts in its duties and responsibilities in the administration of federal constitutional law." *Id.* at 272.

CONCLUSION

The Three-Judge Federal Court below incorrectly held Section 1 of Article 5154d, Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes and Articles 482 and 439 of the Texas Penal Code to be unconstitutional for the reasons given above. Furthermore, whether these statutes be constitutional or unconstitutional, the court below erroneously, under the principles of federalism, enjoined state officials from enforcing the statutes.

Jurisdiction is clear, and the questions presented are so substantial and of national importance as to require plenary consideration by this Court.

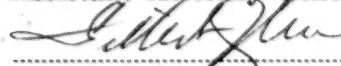
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CERTIFICATE OF SERVICE

I, Gilbert J. Pena, a member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of the foregoing Jurisdictional Statement has been served on counsel for the Appellees by depositing same in the United States Mail, postage prepaid, addressed to Mr. Chris Dixie, Attorney at Law, 609 Fannin Street Building, Suite 401, Houston, Texas 77002, on this the 12 day of February, 1973.


.....
GILBERT J. PENA
Assistant Attorney General

APPENDIX 3

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

CIVIL ACTION

No. 67-B-36

FRANCISCO MEDRANO, KATHY BAKER, DAVID
LOPEZ, GILBERT PADILLA, MAGDALENO DIMAS,
BENJAMIN RODRIGUEZ, and UNITED FARM
WORKERS ORGANIZING COMMITTEE, AFL-CIO,
Plaintiffs,

vs.

A. Y. ALLEE, JACK VAN CLEVE, JEROME PREISS,
T. H. DAWSON, DR. RENE SOLIS, RAUL PENA,
ROBERT PENA, JIM ROCHESTER, B. S. LOPEZ,
and S. H. DENSON,
Defendants.

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Allen, Texas, Luther E. Jones, Jr., Corpus Christi, Texas, Frank R. Nye, Jr., Rio Grande City, Texas, Attorneys for Defendants

Before BROWN, Chief Judge
United States Court of Appeals
GARZA, District Judge, and SEALS, District Judge

OPINION OF THE COURT

SEALS, District Judge:

From June, 1966, until June, 1967, the United Farm Workers Organizing Committee, AFL-CIO, was engaged in an effort to encourage the predominantly Mexican-American farm laborers of the lower Rio Grande Valley of Texas to join with the union in obtaining greater economic benefits for this class. The individual plaintiffs herein were at various times associated or in sympathy with this movement. In pursuit of their objectives, strikes were called; and picket lines, rallies and demonstrations were employed to enlist nonunion laborers in the common cause. These activities, and the responses triggered thereby, resulted in a controversy characterized on both sides by strong emotions and sometimes violent reactions. During this period supporters of the strike came into open conflict first with local and later state authorities, which led to numerous arrests and the initiation of prosecutions under various state laws. Finally, all picketing in support of the strike was enjoined by a state district court.

I. STATEMENT OF THE CASE

Plaintiffs have brought this suit against certain Texas Rangers, officers of the State of Texas, and other public officials of Starr County, Texas, seeking declaratory and

injunctive relief. The suit was filed as a class action by plaintiffs on behalf of those similarly situated; it is properly maintainable as such pursuant to Rule 23(a) & (b) (2) of the Federal Rules of Civil Procedure.

It is asserted that jurisdiction of the court over this complaint arises under Sections 1343, 2201, 2202, 2281 and 2285 of Title 28, United States Code, Sections 1983 and 1985 of Title 42, United States Code; and the First and Fourteenth Amendments to the Constitution of the United States. The complaint seeks declaratory and injunctive relief in an attack on the constitutionality of certain state statutes, and an injunction is sought restraining defendants from enforcing these statutes against plaintiffs and their class. The complaint also alleges that defendants, as state officials acting under color of state law, conspired and did deprive plaintiffs of their civil rights, privileges and immunities protected by the laws and Constitution of the United States.

The disputed issues of fact and law were presented to the court, arguments of counsel have been heard and their briefs considered. The following constitutes the Findings of Fact and Conclusions of Law of this Court.

The first matter to be determined is the effect of *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) and its companion cases¹ upon this litigation. *Younger* is not an abdication of the federal role in protecting citizens from "official lawlessness." It is a simple restatement of what has always been the law, namely, that a state criminal prosecution begun in good faith will not be enjoined, even on constitutional grounds by a federal court, except under extraordinary circumstances where the danger of irreparable injury is both great and immediate. *Fenner v. Boykin*, 271 U.S. 240, 243-244 (1926);

Douglas v. City of Jeannette, 319 U.S. 157, 163-164 (1943).² In *Younger* the Supreme Court followed this long standing doctrine and held that a good faith prosecution under a possibly unconstitutional statute should not be enjoined absent special circumstances.³ This result was predicated on two grounds: Comity (the respect for the judicial processes of the States) and equity (the existence of an adequate remedy at law). 401 U.S. 37 at 43-44. It is also clear from *Younger* that *Dombrowski v. Pfister*, 380 U.S. 479 (1965) is still the law, and that bad faith prosecution is the type of immediate and irreparable harm which justifies federal intervention to protect federally secured rights. 401 U.S. 37 at 48-49. See, *The Supreme Court*, 1970 Term, 85 Harv.L.Rev. 40 at 301-315 (1971).

Where a plaintiff seeks to enjoin the enforcement of a state law, have it declared unconstitutional, and enjoin pending and further prosecutions under that law, and where his allegations are sufficient to invoke the equity jurisdiction of a federal court to protect federally secured rights, the three judge federal district court is required to examine the pleadings and proof in order to make the necessary findings on "bad faith prosecution," "harassment," and "irreparable injury" prior to granting or denying the requested relief. *Dyson v. Stein*, 401 U.S. 200 (1971), *Byrne v. Karalexis*, 401 U.S. 216 (1971). It is to this inquiry that we now direct our attention.

II. THE FACTS SUPPORTING THE GRANTING OF INJUNCTIVE AND DECLARATORY RELIEF

This panel was convened in Brownsville, Texas, and heard evidence presented by both parties concerning all phases of the controversy. Our evaluation of this evidence must be a general one—an appraisal of the circumstances as a whole. These findings in no way constitute

conclusions by this Court as to whether plaintiffs are guilty or innocent of the various offenses for which they were arrested. The reach of our appraisal embraces a constitutional evaluation of the defendants' activities throughout the strike; it attempts nothing more.

Five of the defendants are Texas Rangers, employees of the State of Texas and residents of Dimmitt County, Texas. Defendant Solis is the Sheriff of Starr County, Texas, and defendants Raul Pena and Roberto Pena are Deputy Sheriffs of that county. One of the defendants is a Justice of the Peace of Starr County, Texas, Precinct No. 1. Defendant Jim Rochester is a Special Deputy in the Starr County Sheriff's Department and a resident of Starr County. This defendant at all times material to this action was also employed by one of the privately owned farms in Starr County in a managerial capacity. Plaintiffs contend that these defendants, acting in concert, unlawfully combined and conspired to deprive them of their civil rights.

The United Farm Workers Organizing Committee, AFL-CIO, instituted the strike on June 1, 1966, in an attempt to organize farm workers in Starr County. The strike lasted about thirteen months and received State and nationwide publicity, particularly during the period in which a Senate Investigating Committee held hearings in the area. In furtherance of the strike, picketing occurred every day (with the exception of Sundays) until enjoined by a State District Court. During the strike there was destruction of property belonging to the farms and property of the Missouri-Pacific Railroad Company. There were also acts of violence and threats of violence. In one instance a railroad bridge was partially destroyed by fire. Although it is inferred by defendants that this destruction and violence was caused because of the strike

and by those in sympathy with it, no evidence was presented specifically in this respect. It was allegedly because of this that the Missouri-Pacific Railroad and Starr County officials requested the aid of Texas Rangers in order to preserve law and order. During this period State and local authorities made arrests on fifteen occasions in Starr County. On two occasions arrests were made in Hidalgo County and on some occasions in Cameron County. These out-of-county arrests were allegedly made because of attempted interference with the railroad's normal operation of trains in those counties.

This Court has carefully evaluated the evidence which counsel for both parties so ably presented, and we are confident that this evidence taken as a whole has provided us with the requisite perspective for determining plaintiffs' harassment charges. The record is long and involved and a lengthy summary and analysis of it all is not necessary. Our overall evaluation of the nature of defendants' actions is illustrated by the following specific incidents.

On June 8, 1966, Eugene Nelson, one of the strike's principal leaders was at the Roma, Texas, International Bridge between Mexico and the United States attempting to persuade laborers from Mexico to support the strike by refusing to work for the farms in the United States. Nelson was taken into custody by a Deputy Sheriff of Starr County and transported to the Courthouse in Rio Grande City where he was detained for some four hours without charges being filed against him. During this time he was taken before the County Attorney of Starr County who questioned him about his activities in regard to the strike and informed him that he would be under investigation by the Federal Bureau of Investigation concerning an alleged threat to blow up the Courthouse and

to destroy the buses being used by local farms to transport Mexican laborers to work.

On October 12, 1966, approximately twenty-five union members and sympathizers were picketing along the side of U. S. Highway 83 adjacent to the Rancho Grande Farms. Many of them were exhorting the laborers in the field to join the strike and one of them was using a bull horn. At the request of farm officials, Deputies of Starr County arrived and ordered the pickets to disperse. Raymond Chandler, one of the union leaders, left his automobile and engaged Deputy Raul Pena in conversation concerning the validity of the order. He was arrested by Pena "because he started talking to me, you know, in very loud and vociferous language so I arrested him, yes, sir." None of the others were arrested, because they obeyed the order to disperse. Although Raul Pena testified that Chandler and the others were using abusive and vulgar language, the complaint later filed against Chandler shows that the words "obscene language, vulgar language, indecent language, swearing and cursing, yelling and shrieking, exposing the person, and rudely displaying a weapon" had been deleted. This indicates that the union people were engaging in peaceful picketing along the highway right-of-way when ordered to disperse. There is no evidence that the exhortations from the pickets were disturbing or disrupting the work in the fields, but only that it annoyed the crew leaders and managers of the laborers.

After his arrest, Chandler was taken to the Court-house in Rio Grande City and a complaint for violation of Article 474 of the Texas Penal Code was filed against him. Bond was set in the amount of \$500. The maximum punishment for violation of Article 474 is a \$200 fine. At that time two of Chandler's friends came to the

courthouse to make bond. The evidence is uncontroverted that they were verbally abused by the Deputies and were told by Deputy Raul Pena that since they were not lawyers that they had no business in the Courthouse and that if they did not leave they would be placed in jail. Upon hearing this, they left.

Several days later, on October 24, 1966, the President of the Union in Starr County, Domingo Arrendondo, and several others were in the Courthouse under arrest. While in a hall they shouted "viva la huelga" in support of the strike. A Deputy Sheriff immediately struck Arredondo in the face, pushed him backwards and then pointed his gun at the Union President's forehead ordering him not to repeat those words in the Courthouse. The Courthouse, he said, was a "respectful place." This action apparently subdued the arrestees.

On November 3, 1966, members of the union picketed certain produce packing sheds located on the Missouri-Pacific Railroad tracks near U. S. Highway 83 outside of Rio Grande City. This was at about the time that green pepper and lettuce crops were being harvested in that area for shipment to points outside the Rio Grande Valley. The County Attorney of Starr County, after consulting with members of the staff of the Attorney General of Texas, drafted a complaint against ten union leaders and sympathizers charging a violation of Article 5154(f), the Texas secondary picketing statute. This complaint was filed by Deputy Roberto Pena on November 9, 1966. Prior to this time, following the burning of a railroad bridge, the County Attorney had requested law-enforcement assistance from the Governor and the Department of Public Safety. Several Texas Rangers under the command of Captain A. Y. Allee were sent to the area around LaCasita Farms. On November 9th the warrants of arrest for the

November 3rd violation of Article 5154(f) were served by the Rangers. One of those taken into custody by the Rangers was Reynaldo De La Cruz. The evidence is undisputed that while he was under arrest, two Rangers advised him that he could work for the La Casita Farms for \$1.25 an hour (the wage demanded by the union at that time) and later on they could organize a more peaceful union. De La Cruz was further advised that the Rangers were there to break the strike and would not leave until they had done so.

Another instance of selective law enforcement occurred at the Starr County Courthouse about 9:30 in the evening on January 26, 1967. Earlier in the day five union members had been arrested along the Rio Grande while trying to convince employees of Trophy Farms to join the Union. That evening approximately twenty union supporters gathered at the courthouse and conducted a prayer vigil for the apparent purpose of protesting the arrests and demonstrating union solidarity. Two members of the group, Reverend James Drake and Gilbert Padilla, mounted the courthouse steps and engaged in prayer. Responding to the jailer's report that a crowd had gathered, Deputy Raul Pena arrived and ordered the group to leave the courthouse grounds. They did so, but Drake and Padilla remained on the steps. Deputy Pena then arrested them for unlawful assembly. From the testimony of witnesses and stipulations of the parties it appears that the courthouse grounds had been used in the past for night rallies and dances, some of which took place at this entrance and some at the opposite entrance. These events were staged under the aegis of either permit or custom and occurred without incident. While a permit was not obtained by this union group, it is plain that permits were not required for all such gatherings. The hour was

not late. The group was not large. The activity was peaceful and did not endanger public safety. The participants left in an orderly manner when requested to do so. The record is clear that the union's nocturnal meeting was treated differently from other gatherings which were more frivolous and raucous in nature. The enforcement exhibited here is reminiscent of that encountered in *Fowler v. Rhode Island*, 345 U.S. 67, 73 S.Ct. 526, 97 L.Ed. 828 (1953), and can only be characterized as "biased" or "selective."

The Court recognizes that the courthouse jail contained five union men as prisoners and that the community was becoming restive. However, it seems that the situation could have been controlled by more observation instead of abrupt action which broke up a peaceful assembly.

On February 1, 1967, Jim Rochester, a manager of La Casita Farms who was also a special deputy of Starr County, received a radio message that union people were in or close by the field in block 55 of La Casita Farms. One side of block 55 is bordered by a private road maintained by the farm. On one side of the road are the La Casita fields and on the other side is private property owned by a Thomas Bazan. Rochester drove down this road and observed a number of people standing on the Bazan property, others in the road and on the edge of the La Casita field. As he drove past them on the road the people all moved back onto the Bazan property away from La Casita. Rochester called his office and had his timekeeper notify the Sheriff's office. Rochester observed the people shouting to about fifty or sixty laborers in the field and although he could not understand them, he assumed they were soliciting the laborers to stop work. Shortly thereafter two deputies arrived and on ascertaining that the group was made up

of union members and sympathizers engaged in exhorting the laborers to join the strike, arrested nine of them. Five of this number were Roman Catholic Priests wearing clerical collars. At the time of their arrest two demonstrators ran into the brush on the Bazan property. Rochester, acting in his capacity as a special deputy, gave chase and captured one of them. The deputies then took all of those in custody to the Courthouse where they were charged with disturbing the peace. At the Courthouse they were informed by the Justice of the Peace on instructions from the County Attorney that if they ever appeared in that Court again under the same charge they would be placed under a peace bond and if the bond was not met they would be placed in jail. The evidence does not show that the demonstrators did any more than shout at the laborers in the field, who at the time of the arrest were some hundred yards away and working away from them. The substance of the exhortation was to the effect that the workers were slaves and that they should quit work. Rochester testified that he did not tell the deputies he wanted any particular charges filed or that he wanted the group arrested for trespassing on La Casita property.

On the morning of May 11, 1967, several of the union leaders were at the Camargo International Bridge with several Texas Rangers and Captain Allee. The union people were picketing the bridge where Mexican laborers were being brought into the United States by bus to work on the farms. At that time Captain Allee informed the strikers that he could get them all a job for a dollar and a quarter an hour within the next ten minutes.

On the next day, May 12, 1967, pickets gathered on private property adjacent to La Casita Farms. At the request of La Casita, Captain Allee, four Rangers and two

Deputy Sheriffs drove to the area. The evidence is in dispute as to whether Allee instructed the pickets not to converse with the laborers in the fields. However, the Rangers made a thorough investigation in order to determine whether or not the pickets were on the property adjacent to La Casita with the permission of its owner, a Mr. Solis. Captain Allee then checked to make certain that the pickets were at least fifty feet apart and in accordance with Article 5154(d). After picketing a short time under the watchful eye of the officers, the pickets attempted to leave, but found that the county-maintained road separating the Solis and La Casita properties was blocked by one of the Sheriff's automobiles. The pickets were detained by a Deputy Sheriff until he determined that they had Captain Allee's permission to leave the area.

Later that same day, Eugene Nelson was arrested and charged with threatening the life of certain Texas Rangers. While he did not take the "threat" seriously, Captain Allee directed that charges be filed to protect the Rangers from censure if something happened to Nelson. Later in the day, a Friday, an attorney tendered to the Deputy Sheriff Raul Pena a bond in the appropriate amount signed by a Joseph Guerra as surety. Although the deputy personally knew Guerra to be a well known land owner and person of substance in Starr County that had acted as surety on the bonds in the past, he refused to accept the bond until the following Monday when tax records reflecting land ownership were shown to him. The evidence is clear that there was no valid reason for not accepting the bond on Friday when it was tendered.

On May 26, 1967, fourteen pickets were arrested in two groups at Mission, Texas. They were initially charged with trespassing on private property, but this charge was

later changed to unlawful assembly. Three days later these charges were superseded by secondary picketing and boycott charges filed by agents of the Missouri-Pacific Railroad. The first group of ten persons was arrested by Texas Rangers when they allegedly attempted to block a train carrying produce from the Valley. Later that evening the Reverend Edgar Krueger, a leader of the strikers, and three others arrived and began trying to organize other pickets. As another train passed through, Krueger and another union member, Magdaleno Dimas, were placed in custody by the Rangers. After being arrested, Krueger and Dimas were taken toward the passing train and the evidence confirms that as they waited for it to pass, the Rangers held both of their prisoners' bodies so that their faces were only inches from the train. Two others were also arrested, including Mrs. Krueger. During the arrests, Rangers confiscated cameras being used by union people to photograph the event. Although the evidence is disputed as to whether the first arrest of ten pickets was justified under the circumstances, it is clear that the second arrest of Mr. and Mrs. Krueger was not. At best it appears that Krueger urged Allee to arrest him since he had arrested the others and the Ranger complied. Krueger was not on the tracks, but had been urging bystanders to resume the picketing. Mrs. Krueger was charged with secondary picketing although the evidence is undisputed that she was arrested either for taking a picture of her husband's arrest or attempting to strike Captain Allee with her camera in her husband's defense. After the arrest the prisoners were roughly handled by the Rangers, and Krueger was advised that he should stop his picketing and strike activities as such activities were not consistent with his ministerial functions.

This second arrest is all the more peculiar, because the testimony of the arrestees and the officers shows that

the four did not have signs and were not picketing or physically blocking the track, but were trying unsuccessfully to encourage bystanders to picket. Simply put, the only justification for the second arrest was that Rev. Krueger and his companions were encouraging persons to picket. The record also shows that they were charged with secondary picketing and boycotting upon the complaint of Sam Rogers, a Special Agent of the railroad. (Pltf. Ex. 7.20C). However, Rogers was not present at this second incident as he had gone to the county seat to make a complaint against the first ten arrestees. When solicited by the officers to make the complaint against the Kruegers, Dimas and Adair, he did so without any knowledge whatsoever of the events which precipitated the arrests. (Tr. 703-705). Similarly, on December, 28, 1966, Deputy Sheriff Raul Pena had filed charges against Reynaldo De La Cruz for impersonating an officer by wearing a badge in and around the Union Hall, without ever seeing the offense. (Tr. 634). The badge in question was of the shield-type, while the badges worn by the deputies and Rangers are stars. In answer to interrogatories Pena indicated that he was aware that De La Cruz and Pedro Dimas had worn similar badges when directing traffic at union functions.

On May 31, 1967, four carloads of Texas Rangers and Deputy Sheriffs arrived at La Casita Farms. At that time ten pickets had put their signs away and were resting in the shade of their cars which were parked along side the county road. The evidence is in dispute as to whether the pickets were shouting to the laborers in the fields. Three other pickets, two men and a woman, were farther down the road, using a loud speaker to exhort the workers to join the union. At the same time a truck owned by La Casita was playing music over a loud speaker to drown out the words of the pickets. There was no in-

terference or obstruction of any traffic on the road or into the farm. Immediately upon his arriving at the scene, Captain Allee ordered the arrest of all the pickets, including those who were resting beside their cars in the shade. The reason for these arrests was that they were allegedly violating the mass picketing statute and Allee was afraid of violence because the laborers were all carrying knives which they were using in their work.

On the evening of June 1, 1967, two of the named plaintiffs, Magdaleno Dimas and Benjamin Rodriguez, were arrested by Captain Allee after a long search that led to the home of another named plaintiff, Kathy Baker. The Rangers had searched all evening for Dimas to arrest him for allegedly brandishing a gun in a threatening manner in the presence of Special Deputy Rochester at the La Casita Shed. They found him by "tailing" two Union people, William Chandler and Alex Moreno, from the Union Hall to Kathy Baker's house with their car lights turned off. The Rangers had neither an arrest warrant nor a formal complaint on which a warrant could be based, so they put in a radio call for a Justice of the Peace and waited across the road. Dimas soon emerged from the house with Chandler and Moreno. Dimas had just picked up his .22 rifle which had been leaning on the porch wall, and as the three were leaving the house the Rangers turned on their car headlights and moved toward them with shotguns leveled. Chandler testified that he told Dimas to drop the gun because he was afraid that if the Rangers saw it, they would open fire. Dimas dropped the gun and began to walk back toward the house. Chandler said: "The next thing that happened, I noticed that the Rangers were drawing a bead on Magdaleno. I then yelled, 'Don't shoot.' And they didn't shoot." (Tr. at 335). Dimas ran into the house but the

Rangers did not follow. The Rangers then approached the house and without saying a word, Captain Allee jabbed Moreno in the ribs with the point of his shotgun barrel, grabbed him by the neck and shoved him hard. Both Moreno and Chandler were arrested with no reason given. They were later charged with assisting Dimas to evade arrest. However, by his answers to interrogatories and his own testimony Captain Allee never told these men that he sought to arrest Dimas. Instead, he told them that he was looking for Dimas and wanted to prevent a killing.

When the Justice of the Peace arrived he filled out a search warrant on forms he carried with him. The Rangers then broke into the house and arrested Dimas and Rodriguez in what appears to this Court to be a violent and brutal fashion. Captain Allee admitted that he struck Dimas on the head with his shotgun barrel once, but he testified that neither man was hit or kicked at all except for that one blow. He also testified that both men fell when they attempted to run from the room and collided with a door and each other at the same time.

The following day two physicians examined Dimas and Rodriguez, and on June 6, 1967, Dimas was examined by a third doctor. Their reports reveal a very different picture from Allee's.

Dimas was hospitalized from June 2nd through June 6th. He suffered a brain concussion, multiple bruises on both sides of the neck and other bruises behind his left ear, on his left side, on the right side of his back, on his left forearm and left wrist. Dr. Casso testified that X-ray negatives revealed that Dimas had received a severe blow to the lower right portion of his back causing the spine to curve out of shape away from the impact point. Dimas also sustained a laceration which required four stitches to close.

Rodriguez had cuts and bruises behind his right ear, bruises on his right elbow, on his right upper arm, on the right upper portion of his back and on his right jaw. His left little finger was broken and the nail was torn off.

It is difficult indeed for this Court to visualize two grown men colliding with each other so as to cause such injuries.

It is the opinion of this Court that the superiors of the strike were on several occasions restrained by defendants from lawfully exercising their rights under the Constitution of the United States. By their words and actions both local and State authorities exhibited their personal bias and opinions against the strikers and their cause. The most striking evidence of this was the regular distribution of a violently anti-union newspaper by the Starr County Sheriff's office. Each week some one hundred copies of *LaVerdad* were picked up at the bus station by a deputy in an official car and taken to the Sheriff's office. Thereafter, they were distributed locally by various deputies. Excerpts from this newspaper are included in the appendix to this opinion which illustrate the nature of this publication.

Another example of the attitude of the authorities was their selective enforcement of the laws during the strike. On May 11, 1967, David Lopez, a field representative of the AFL-CIO attempted to talk to Ranger Jack Van Cleve about the strike. Van Cleve refused to speak to him and pushed him backwards with considerable force. The Reverend Mr. Krueger was with him at that time and was also shoved back by Van Cleve. The evidence is indisputed that neither of the men were demonstrating or blocking the road at that time. Both Krueger and

Lopez later attempted to file charges of assault against the officer. The County Attorney of Starr County testified that he "looked into the matter" but felt there was insufficient evidence to go forward with the complaint. It does not appear that any of the bystanders or union people present were interviewed in this regard.

On the other hand, whenever complaints were filed by the officers or others against union activities these charges were always followed by quick action by the local authorities. On December 28, 1966, pickets gathered at the entrance of La Casita; an employee of La Casita, Manuel Balli, was driving a pickup truck into the farm when Librado De La Cruz, one of the pickets, reached through the truck's open window and apparently attempted to grab Balli by his coat. The attempt failed and Balli drove on through the entrance. Deputy Sheriffs immediately arrested De La Cruz and charges of assault were filed in the State Court. It is also of importance to note that this is the strongest evidence presented to the Court of an assault on anyone by union people during the strike.

Looking at the circumstances as a whole, it is the conclusion of this Court that the unjustified conduct of the defendants had the effect of putting those in sympathy with the strike in fear of expressing their protected first amendment rights with regard to free speech and lawful assembly. The conclusion is inescapable that these officials had concluded that the maintenance of law and order was inextricably bound to preventing the success of the strike. Whether or not they acted with premeditated intent, the net result was that law enforcement officials took sides in what was essentially a labor-management controversy.

This is not intended as a white wash of the activities carried on by the union and its sympathizers during this period. In a controversy such as this, it is rare indeed if all the blame can be laid to rest at one doorstep. However, the issue that is presented to this court for determination is whether the defendants stepped over the line of neutral law enforcement and entered the controversy on one side or the other. It is the judgment of this Court that such was the case.

III. THE "YOUNGER" TESTS

As noted above in Part I of this opinion, *Younger v. Harris*, *supra*, makes it clear that the principles enunciated in *Dombrowski v. Pfister*, *supra*, for the enjoining of state criminal processes in the protection of free speech do not apply where the only danger, real or imagined, is the "chilling" of free expression incidental to the good faith prosecution of violations of state penal provisions, even where those laws are facially unconstitutional. The facts exposed by the record in this case fall short of good faith prosecution and, in the opinion of this Court, amount to irreparable injury to these plaintiffs since they cannot eliminate the threats to their rights as citizens in a single criminal prosecution.

The arrests, detentions without the filing of charges, seizures of signs, dispersals of pickets and demonstrators, the threats of further prosecutions if pro-union activities did not cease, the abuse of the bonding process, and the inducements offered by peace officers to strikers to return to work, disclose a pattern of action by local authorities designed to halt the strike and to discourage attempts to engage in constitutionally protected conduct in support of the strike. The union's efforts collapsed under this pressure in June of 1967 and this suit was filed

in an effort to seek relief. Since that time the union has not engaged in organizational activities. To the extent that the farm workers were forced to abandon activity to better their lot which is protected by the First Amendment they have endured irreparable harm.

Arrests followed by release without the filing of charges prevent those arrested from asserting their constitutional rights in defense of their conduct and obtaining a review of the state law. Similarly, the dispersal of pickets under the threat of arrest effectively prevents a test of the state law and a review of their conduct and that of the police. Multiple recurring arrests under these challenged statutes likewise reduce the efficacy of protecting constitutional rights of free speech and assembly in a single prosecution, since the statutes can be used repeatedly to discourage similar expressions and assemblies even after the successful defense of a single prosecution.

Threatened government reprisals and promised rewards are not susceptible to challenge through the defense of a criminal prosecution. In the former, because the threat is so effective in discouraging the unpopular conduct. In the latter, because no prosecution can result from either the acceptance or rejection of the inducement.

The injury to the plaintiffs' constitutional rights of free speech and assembly is all the more acute, since the tactics do not have to be directed at a particular person in order to diminish his ability to freely express himself. Even though no attempt is made to intimidate him, or if made it is unsuccessful, still his opportunity and ability to be heard and to join with others in pressing for mutual goals is damaged by depriving him of the support of other like-minded persons who are effectively intimidated. It is often difficult to "stand up and be counted." Human

beings like to feel that they are not alone and are reticent to act singly. This is especially so when their ideas are opposed by those in authority. If at Lexington Green all but John Parker had given ground when Major Pitcairn ordered the colonists to disperse, it is doubtful that his stand would have been effective at all.

As a general rule, a litigant may assert only his own constitutional rights or immunities. *McGowan v. Maryland*, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961). However, in order to be exercised with any effect the most important of these rights, because they are communicative, require not only opportunity, but others to whom the exercise can be directed. Thus, freedom of speech includes the freedom to hear, and freedom of the press has the freedom to read as its corollary. Antieu, *Modern Constitutional Law* (1969), p. 4, §1:1. Similarly, the right to assemble is both a personal and collective right, and abridgement of that right by dissuading others from exercising it effectively curtails its exercise by an individual who is not intimidated.

In so far as the plaintiffs are deprived of this power of cohesion they are injured in the exercise of their constitutional rights above and beyond the injury to their individual rights to free speech and assembly in the abstract. While each one may be able to vindicate his conduct by raising his constitutional rights as a defense to a single criminal prosecution, this will not safeguard the collective exercise of those rights or protect the individual from further harassment under the circumstances presented here.

In *Duncan v. Perez*, 321 F.Supp. 181 (E.D. La. 1970), *aff'd* 445 F.2d 557 (5th Cir. 1971), *cert. den.* 30 L.Ed.2d 254 (1971), the District Court enjoined a re-prosecution

of Gary Duncan, a Negro on a charge of simple battery after his first conviction was reversed for denial of trial by jury. The Court found that the prosecution of Duncan was in bad faith and for the purpose of harassment. In reaching this conclusion the Court noted the multiple arrests of Duncan, the unusually high bond, the unusually high sentence, the demand for double bond, the arrest of his attorney, and the comments and attitude of local officials. These factors indicated that the local authorities had used the criminal process to punish Duncan for his exercise of federally secured rights in the civil rights movement. The District Court gave two other reasons for enjoining the prosecution: the non-existence of a legitimate state interest in reprosecuting Duncan; and the deterrence and suppression of the exercise of federally secured rights by Negroes in Plaquemines Parish if Duncan was brought to trial again. On appeal, the Court of Appeals affirmed and held that under *Younger v. Harris*

"an individual is not entitled to federal injunctive relief against a state prosecution which has been instituted by state officials in good faith unless irreparable injury to the state court defendant (as shown in *Dombrowski v. Pfister*, 1965, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22) can be established. On the other hand, should the state court defendant be able to establish that the state prosecution has been instituted *in bad faith and for the purposes of harassment* . . . irreparable injury need not be shown provided there is present a basis for federal jurisdiction, e.g., Title 28 U.S.C., Sec. 1343 and Title 42, U.S.C. Sec. 1983." 445 F.2d 557, 559-560 (5th Cir. 1971). Emphasis in original.

Thus, the requirements of *Younger v. Harris* for the enjoining of state criminal prosecutions by a federal court

may be met in one of two ways. Here, we find that these plaintiffs have met both of these tests in that they have established the existence of bad faith prosecutions as well as irreparable injury to their own federally protected rights and those of their class. The bad faith on the part of the local authorities can be seen in facts set out above in Part II and in the discussion of "irreparable injury" in this part. The authorities have prevented the plaintiffs from defending their conduct by causing crowds to be dispersed under threats of arrest, by arresting persons and then releasing them without filing charges, by abusing the bond system, by filing numerous charges against the plaintiffs, by refusing to file complaints made by the plaintiffs, by supporting a private anti-union newspaper, by the comments and threats made to union supporters in custody, union supporters seeking to file charges, union supporters on picket lines, and union supporters engaging in no activity whatsoever, all for the purpose of breaking up the strike and preventing persons from advocating support for the strike and its principles. The police authorities were openly hostile to the strike and individual strikers, and used their law enforcement powers to suppress the farm workers' strike.

Having determined that the prosecutions involved here were instituted in bad faith and for the purpose of harassment, that the plaintiffs' exercise of their constitutional rights has been irreparably injured, and that the situation is one in which the defense of the State's criminal prosecutions cannot adequately vindicate those rights, we now move on to a consideration of the various Texas statutes which provide the basis for the charges against the plaintiffs.

IV. THE CHALLENGED TEXAS STATUTES

The next matter to be determined is whether Articles 5154d §1 and 5154f of Vernon's Texas Civil Statutes and Articles 439, 449, 474, 482 and 784 of Vernon's Texas Penal Code are unconstitutional on their face.

Plaintiff's complaint prays for the entry of a declaratory judgment pursuant to 28 U.S.C. §2201 that these seven Texas Statutes are facially unconstitutionally vague and broad. It is our first duty in response to this prayer to determine whether under the facts "there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment."⁴ In this Court's judgment, the evidence clearly shows a "substantial controversy." Not only are plaintiffs now facing charges in the Texas courts under these statutes but the evidence shows that these statutes were employed as a tool for the continuous harassment of plaintiffs. The threat of similar acts in the future lingers on. This controversy is ripe for declaratory relief if such is warranted.⁵

Defendants have advanced the position that we should abstain from consideration of the constitutional questions in favor of a State court construction of these statutes. It should be noted that the abstention doctrine should be applied only where "the issue of state law is uncertain." *Harman v. Forssenius*, 380 U.S. 528, 534, 85 S.Ct. 1177, 14 L.Ed.2d 50 (1965) and "only in narrowly limited 'special circumstances'." *Zwickler v. Koota*, 389 U.S. 241, 248, 88 S.Ct. 391, 19 L.Ed.2d 444. Abstention is especially inappropriate where a statute is attacked for facial invalidity in light of the First Amendment. See, *Baggett v. Bullitt*, 377 U.S. 360, 84 S.Ct. 1316, 12 L.Ed.2d 377 (1964) and *Wisconsin v. Constantineau*, 400 U.S. 433, 91 S.Ct. 507, 27

L.Ed.2d 515 (1971). In this Circuit the policy militating against abstention has been stated in this wise:

"...[E]ven if it be assumed that a state court could resolve the overbreadth problems, either by means of 'an acceptable limiting construction readily to be anticipated' or by voiding the statute on its face, abstention is nevertheless inappropriate. In such a situation the state courts would simply be deciding a federal constitutional issue within the framework of construing state law. A primary motive for abstaining—avoidance of constitutional issues—is not served. The issue is simply referred to another forum. The state courts, however, possess no special institutional competence to decide such issues. Since the federal courts are at least as adequate a forum, no real purpose would be served by denying a litigant his choice of a federal forum."

Hobbs v. Thompson, 448 F.2d 456, 463 (5th Cir. 1971)

Furthermore, this Court has stayed its hand for some four and one-half years. During this time we have not been shown a state interpretation narrowing or voiding these statutes on federal constitutional grounds in the intervening years. If abstention was ever appropriate it is no longer. Since we find no "special circumstances" requiring abstention or further delay, we proceed to the merits of the plaintiffs' constitutional challenge.

The challenge to these statutes requires us to explore the constitutional limitations a state may place on public demonstrations. Picketing, marches, mass protest meetings and other assemblies have long been accorded the protection of the first amendment as "symbolic speech." Nevertheless, demonstrations are subject to greater regulation than "pure speech." *Cox v. Louisiana*, 379 U.S. 536,

578, 85 S.Ct. 453, 468, 13 L.Ed.2d 471, 500 (1965) (concurrency of Justice Black). It is our task to evaluate the reasonableness of these Texas regulations.

"Reasonableness" turns on two distinct concepts—"vagueness" and "overbreadth". Vagueness is a notice concept. A statute is considered vague under the Constitution if the meaning provided by its terminology and syntax is not sufficiently understandable to the average person so as to inform him of his rights and duties under the law.⁷

"Overbreadth" has come to mean that a statute is void when a reasonable application of its sanctions could include conduct protected by the Constitution.⁸ Where first amendment rights are concerned, the Supreme Court has made it clear that if a statute identifies the legitimate state interests which it regulates, that if a statute places only reasonable regulations on the time, place, manner and duration of activities, and that if a statute impliedly limits the discretion of those who enforce it, then it is not overbroad.⁹ More generally, if it can be said of each statute that it supplies the proper criteria and standards to require objective enforcement of legitimate state interests, then the Constitution is satisfied. Our application of these principles will begin with Articles 5154d(1) and 5154f—the two statutes attacked by plaintiffs involving picketing.

(A). PICKETING

Any consideration of picketing must begin with *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940). In *Thornhill*, the Supreme Court held that picketing was protected first amendment activity and that it could be limited only if there was a clear danger of substantial evil. The Court's sweeping pronouncements indicated that

the right to picket was very broad. However, in the years since *Thornhill*, the Court has found it necessary to place more limits on picketing, and in the process two distinct standards of regulation have been imposed: one for "public issue" picketing and another for "private issue" picketing. "Public issue" picketing involves publicizing opinions or grievances which are directed at society as a whole—the "civil dissent" demonstrations of today. "Private issue" picketing involves publicizing particular disputes; this class is confined almost exclusively to labor-dispute picketing.

Plaintiffs have attacked the constitutionality of Articles 5154d §1 and 5154f of V.A.T.S. which regulate "public issue" and "private issue" picketing respectively. We will consider Article 5154d §1 first.

ARTICLE 5154d

Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

"Mass picketing" as that term is used herein, shall mean any form of picketing in which:

1. There are more than two (2) pickets at any time within fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.

2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions.

The term "picket" as used in this Act shall include any persons stationed by or acting for and in behalf of any organization for the purpose of inducing, or attempting to induce, anyone not to enter the premises in question or to observe the premises so as to ascertain who enters or patronizes the same, or who by any means follows employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

The term "picketing," as used in this Act, shall include the stationing or posting of one's person or of others for and in behalf of any organization to induce anyone not to enter the premises in question, or to observe the premises so as to ascertain who enters or patronizes the same, or to follow employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

Thornhill and the cases which followed made it abundantly clear that peaceful "public issue" picketing is protected under the first amendment as "symbolic speech"¹⁰ so long as it is in a location generally open to the public.¹¹ However, this protection will shield one from arrest only if his picketing does not interfere with legitimate State interests such as the regulation of the flow of traffic on public streets and sidewalks.¹² But the State may regulate only with statutes which are narrowly drawn, and take into account all of the nuances of time, place, manner and duration of public expression and assembly, thereby specifying the evils within the allowable area of State control.¹³

The Supreme Court employed this doctrine in the case of *Cameron v. Johnson*, 390 U.S. 611, 88 S.Ct. 1335, 20 L.Ed. 2d 182 (1968) to approve the Mississippi Anti-Picketing law.¹⁴ The statute was acceptable because it was expressly limited to activity which obstructed or unreasonably interfered with ingress or egress from a building, thereby specifying the evil it was designed to prevent.

Applying these principles to Article 5154d §1 requires only that we compare this statute with a Louisiana Municipal Ordinance found unconstitutional by the United States Court of Appeals for the Fifth Circuit in the case of *Davis v. Francois*, 395 F.2d 731 (5th Cir. 1968):

"It shall be unlawful for more than two (2) people to picket on private property or on the streets and sidewalks of the City of Port Allen in front of a residence, a place of business, or public building. Said two (2) pickets must stay five (5) feet apart at all times and not obstruct the entrance of any residence, place of business, or public building by individuals or by automobiles."

Id. at 732.

In holding the provision void, the Court stated:

"The present ordinance patently violates . . . [Constitutional] precepts. Its application is sweeping. It restricts 'public issue picketing' and private picketing; it restricts picketing on both the sidewalks and streets; it extends to all kinds of facilities in the city though each may present different considerations; it absolutely limits the number of picketers to two regardless of the time, place or circumstances. In so doing it 'unduly restricts the right to protest' because it does not aim specifically at a serious encroachment

on a state interest or evince any attempt to balance the individual's right to effective communications and the state's interest in peace and harmony."

Id. at 735.

From *Cameron* and *Davis* it is clear that a statute regulating picketing must specifically identify the type of anti-social conduct it is seeking to prohibit when it authorizes a prohibition of a limitation upon picketing. What has been denominated the "numbers and distance" formula of Article 5154d §1 does not attempt to frame its authorization in the context of an evil to be prevented or a right secured, *e.g.*, to prevent violence or to assure reasonable access to a home or business. Rather the statute establishes a mathematical straitjacket which does not permit law officers or courts to take into account the factual context of a particular picket line. The most recent Texas decisions considering the statute have upheld the formula as a reasonable regulation on picketing, principally because it is not vague. *Geissler v. Coussoulis*, 424 S.W.2d 709 (Tex.Civ.App.-San Antonio, 1969, error ref. n.r.e.); *Sabine Area Building Trades Council v. Temple Associates, Inc.*, 468 S.W.2d 501 (Tex.Civ.App.-Beaumont, 1971, no writ). In both cases the courts strictly adhered to the statutory numbers and distance definition of "mass picketing." In *Geissler* the Court observed that the statute's formula was capable of rendering "otiose efforts to publicize the facts of a labor dispute by picketing and thus constitute an unreasonable interference with freedom of expression. But this does not require that the statute be relegated to the limbo of unconstitutional legislation. A statute valid as to one state of facts may be invalid as to another. [citations omitted]" 424 S.W.2d at 712. While the statutory standard is precise and objective as to the

number and location of pickets, the section still presents two problems.

First, as observed by the *Geissler* court, strict application of the formula by law officers and courts can yield an unconstitutional restraint on protected First Amendment freedoms. Thus the Texas statute is defective for the same reasons advanced in *Davis v. Francois, supra*. Little imagination is required to envisage circumstances where groups of demonstrators, substantially larger than two persons, standing at closer quarters than fifty feet would not threaten the safe flow of traffic nor unreasonably interfere with free ingress or egress from nearby buildings.

Second, the statute condemns obstructions of "any character." Indeed, the injunction upheld in *Sabine Area B.T.C. v. Temple Associates, supra*, tracked the statute and prohibited any defined "mass" picketing which constituted or formed "any character of obstacle" to ingress and egress at the picketed site. 468 S.W.2d 501. Thus once a picket comes within the statutory definition, it does not matter whether the picketing is a reasonable or unreasonable obstacle to access, it is forbidden. The statute does not permit the courts to relax its strictures and to decline to issue injunctions where the picketing does not present an unreasonable barrier to access. Nor have the Texas courts seen fit to read this kind of elasticity into the statute. This Court cannot supply such a construction. *United States v. Thirty-Seven Photographs*, 402 U.S. 363, 369, 91 S.Ct. 1400, 28 L.Ed.2d 822 (1971). See, *Freedman v. Maryland*, 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965) and *Teitel Film Corp. v. Cussack*, 390 U.S. 139, 88 S.Ct. 754, 19 L.Ed.2d 966 (1968).

While part two of Section 1 is similar to the language of the Mississippi statute construed in *Cameron v. Johnson*,

supra, there the Court allowed the State to prohibit only "unreasonable" obstructions while Texas prohibits "any character" of obstruction to free ingress or egress. This is not the precise and narrowly drawn statute contemplated by the Supreme Court. It commands the policeman to remove any mode of free expression which presents any character of obstruction and this is impermissible.

Further this statute is not narrowed by its own definitions of the terms "picket" and "picketing." Both of these definition-clauses embrace persons who attempt to induce others not to enter the picketed premises. Although not all methods of "inducing" others to change their opinions are protected, the Supreme Court has made it quite clear that demonstrations are legitimate forms of persuasion.¹⁵ The statute is void for overbreadth.

ARTICLE 5154f

Article 5154f is the other challenged picketing statute.¹⁶ It prohibits secondary strikes, secondary picketing and secondary boycotts and therefore falls within the principles of "private issue picketing."

The concept of "private issue" picketing grew, in part, out of a series of decisions by the Supreme Court that retreated somewhat from Thornhill's pronouncements on labor picketing. These cases dealt with the scope of constitutional protection of picketing in the context of State court injunctions. The retreat culminated in the case of *International Bhd. of Teamsters v. Vogt*, 354 U.S. 284, 77 S.Ct. 1166, 1 L.Ed.2d 1347 (1957). In *Vogt* the Court was called upon to review the validity of a State court injunction restraining picketing designed to induce the plaintiffs' employees to join a union. Substantial damage had resulted when sympathetic unions refused to make deliveries or

haul goods for the plaintiff. The Court sustained the injunction on the ground that the purpose of the picketing was to violate a valid State policy. Mr. Justice Frankfurter's majority opinion carefully traced the evolution of this principle pointing out the many "reassessments" of the broad pronouncements of *Thornhill*. The "decisive reconsiderations", he writes, came in *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 497-98, 69 S.Ct. 684, 93 L.Ed. 834 (1949). In *Giboney*, union ice peddlers had picketed an ice company in an effort to induce the company to refuse to sell ice to nonunion peddlers. The Court upheld the State injunction against the picketing because "the sole immediate object of the publicizing adjacent to the premises of Empire . . . was to compel Empire to agree to stop selling ice to nonunion peddlers. Thus all of appellant's activities . . . constituted a single and integrated course of conduct, which was in violation of Missouri's valid law." The *Giboney* decision was the unanimous opinion of the Court, and it concluded that the picketing amounted to economic pressure to compel Empire to "abide by union rather than State regulation of trade." *Id.* at 503.

The reassessment process continued in *Teamster's Union v. Hanke*, 339 U.S. 470, 70 S.Ct. 772, 94 L.Ed. 995 (1950) and *Building Service Employees v. Gazzam*, 339 U.S. 532, 70 S.Ct. 784, 94 L.Ed. 1045 (1950). The majority stated in *Gazzam* that "an adequate basis for the instant decree is the unlawful objective of the picketing" But then the Court concluded that *Giboney* controlled and affirmed the case on that basis. Three years later in *Plumbers Union v. Graham*, 345 U.S. 192, 73 S.Ct. 585, 97 L.Ed. 946 (1953), the Court found evidence to support the conclusion that a substantial purpose of the picketing was to put pressure on a contractor to fire nonunion workmen and concluded the injunction was not in violation of the First Amendment.

Frankfurter summarized the evolutionary process in *Vogt*:

"This series of cases, then, establish a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy."

343 U.S. at 293

The Supreme Court has not faced these issues directly since 1957, but the Fifth Circuit has reaffirmed *Vogt* and this Court is bound to its principles.¹⁷

Article 5154f prohibits persons or groups who establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott as those terms are defined.

Section 2(d) defines "secondary picketing" as the establishing of a picket at or near the premises of any employer where no "labor dispute" exists. Article 5154f defines a "labor dispute" as any controversy between an employer and a majority of his employees. In construing Article 5154f, the Texas Supreme Court has invalidated this definition of "labor dispute"¹⁸ under the authority of *American Federation of Labor v. Swing*, 312 U.S. 321, 61 S.Ct. 568, 85 L.Ed. 855 (1941). The Court stated in *Swing* that:

"A State cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him."

Id. at 326.

There can be little doubt that the sanction imposed by Section 2(d) is precisely that which *Swing* held to be inconsistent with the First Amendment. It clearly relies on the absence of an employer-employee relationship and this is impermissible. We, therefore, consider Section 2(d) to be an unconstitutional infringement of freedom of speech.

Section 2(d) defines a "secondary strike" as a temporary work stoppage by the concerted action of two or more employees, of an employer where no labor dispute exists, which results from a labor dispute in which these two employees are not parties. Section 1 prohibits not only participation in a secondary strike but also aiding and abetting a secondary strike. Little imagination is required to visualize an enforcement officer deciding that picketing "aids and abets" secondary strikes. Section 2(b), then, also contains a potential for prohibition of First Amendment rights.

Initially, it should be stated that the term "labor dispute" is also invalid in Section 2(b) as it was for Section 2(d). However, Section 2(b) is not rendered void on this basis alone since without the strict definition of "labor dispute" it is still operable. The statute then prohibits a work stoppage by two or more people which results from a labor controversy to which these two persons are not parties, and picketing could be said to "aid and abet" this by advertising the controversy.

Viewed in this posture, it becomes apparent that the regulation makes irrelevant the picketing's purpose. In order to come within the test of *Vogt*, the statute must require a showing that the purpose of the picketing was to violate a legitimate state policy. Texas has simply stated its policy here and then prohibited anyone from aiding in any manner in its violation. In so doing, the proscription

sweeps in activity which the State is not entitled to prohibit.¹⁹

Section 2(e) defines a "secondary boycott" as a plan or agreement entered into or any concerted action by two or more persons to cause injury or damage to any person or firm for whom they are not employees. The section then lists the different ways in which this "plan" to "cause injury or damages" may be carried out. Picketing is one of the methods listed. Also, the "aid and abet" clause of section one is again available to prohibit picketing designed to bring about injury or damage by one of the other five methods listed in section 2(e).

Simply stated, Texas has prohibited secondary boycott picketing, the purpose of which is either to cause "injury or damage" or to encourage acts which will cause "injury or damage." These are broad terms; they do not point to specific evils. In each case considered by the *Vogt* opinion in which the State prohibition of picketing was allowed to stand, the specific evil condemned by the State was apparent: urging an employer to hire only union employees, urging an employer to not sell to nonunion salesmen, urging an employer to employ a certain percentage of people from certain races. Such evils are easily discernible.

In *Vogt*, the Court said that there was "a growing awareness that these cases involved not so much questions of free speech as review of the balance struck by a State between picketing that involved more than 'publicity' and competing interests of State policy." 354 U.S. at 290. If this balance is to be struck by written statutes, then there is even more reason to demand clarity of purpose. The Constitution requires that limits on first amendment activity be narrowly drawn and that they isolate the specific evils they are condemning for unless we are "metic-

ulous in that regard, great rights will be lost by the absence of findings, by the generality of findings, or by the vagueness of decrees." *Plumbers Union v. Graham*, 345 U.S. 25 204 (Douglas, J., dissenting.)

The evil here is "damage or injury" of any character or degree no matter how slight or subtle. Judicial balance of this sort of "purpose" with the right to freedom of speech would be a haphazard office at best. Section 2(e) is, therefore, unconstitutionally broad.

(B) OBSTRUCTING STREETS

Plaintiffs have also attacked Article 784 of the Texas Penal Code, which prohibits obstructing public streets. It involves many of the same issues as the picketing statutes so it will be considered at this point in the opinion.

ARTICLE 784

Whoever will wilfully obstruct or injure or cause to be obstructed or injured in any manner whatsoever any public road or highway or any street or alley in any town or city, or any public bridge or causeway, within this State, shall be fined not exceeding two hundred dollars.

This is a clear, precise statute drawn so as to carefully carve out a State interest worthy of protection. The Supreme Court has made it clear that the First Amendment does not protect those who intentionally interfere with traffic safety, and this statute is so limited.²⁰

In *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed. 2d 471, 484 (1965), Justice Goldberg said:

"One would not be justified in ignoring the familiar red light because this was thought to be a

means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations."

In the case of *Shuttlesworth v. Birmingham*, 382 U.S. 87, 86 S.Ct. 211, 15 L.Ed.2d 176 (1965) the Court considered the constitutionality of a city ordinance which said: "It shall be unlawful for any person or any number of persons to so stand, loiter or walk upon any street or sidewalk in the city as to obstruct free passage over, on or along said street or sidewalk. It shall also be unlawful for any person to stand or loiter upon any street or sidewalk of the city hafter having been requested by any police officer to move on." *Id.* at 88. The Court objected to the second sentence of the ordinance saying that the provisions permitted travel on a sidewalk only at the whim of a police officer. However, the Court held that a State court construction sufficiently narrowed the provision's scope by requiring a showing of an actual traffic blockage.

We consider the word "obstruct" in Article 784 to mean an actual prevention or a substantial interference with traffic; until this prevention of normal conditions occurs, the statute does not operate. Article 784 is, therefore, not contrary to *Shuttlesworth* and is not unconstitutional.

C. BREACH OF THE PEACE

ARTICLE 474

Whoever shall go into or near any public place, or into or near any private house, and shall use loud and vociferous, or obscene, vulgar or indecent language or swear or curse, or yell or shriek or expose his or her person to another person of the age of sixteen (16) or over, or rudely display any pistol or deadly weapon, in a manner calculated to disturb the person or persons present at such place or house, shall be punished by a fine not exceeding Two Hundred Dollars (\$200).

To answer plaintiff's allegations in regard to Article 474, this Court need not proceed past the case of *University Committee to End the War in Viet Nam v. Gunn*, 289 F.Supp. 469 (W.D. Tex. 1968) (Three-Judge Court), appeal dismissed for want of jurisdiction, 399 U.S. 383, 90 S.Ct. 2013, 26 L.Ed.2d 684 (1970). Having been presented with the same questions in regard to Article 474 that now face this Court, the Court in *Gunn* held the statute "impermissibly and unconstitutionally broad." *Id.* at 475. Judge Thornberry's opinion specified two reasons for the holding. The first concerned the words "loud and vociferous":

"It cannot be doubted that the provision regarding the use of loud and vociferous language would, on its face, prohibit speech which would stir the public to anger, would invite dispute, would bring about a condition of unrest, or would create a disturbance. In so doing, the statute on its face makes a crime out of what is protected First Amendment activity. This is impermissible."

Id. at 474.

The Court also considered the clause "in a manner calculated to disturb" defective since "[i]t leaves wide open the standard of responsibility, relying on 'calculations as to the boiling point of a particular group, not an appraisal of the nature of the comments per se.'" *Id.* at 475.

This Court is in complete agreement with the principles of the *Gunn* opinion. We therefore consider Article 474 to be unconstitutionally broad.²¹

Plaintiffs have also attacked Article 482 of the Texas Penal Code relating to "Abusive Language."

ARTICLE 482

Any person who shall in the presence or hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars.

Literally read, the statute makes it a crime for any person to "curse or abuse" another person "under circumstances reasonably calculated to provoke a breach of the peace" Article 482 is no less a "breach of the peace" statute than Article 474. Both require speech "in a manner calculated to provoke a public disturbance." In *Gunn*, Article 474 was found to be fatally defective because of this requirement; this Court considers Article 482 to be defective for the same reason.

Article 482 comes directly under the principles of *Ashton v. Kentucky*, 384 U.S. 195, 86 S.Ct. 1407, 16 L.Ed.2d 469 (1966). In *Ashton* the Supreme Court reversed a conviction under the Kentucky interpretation of common-law libel which prohibited "any writing calculated to create disturbances of the peace" The Court's decision was

based on the classic doctrine of *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940):

"The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leave to the executive and judicial branches too wide a discretion in its application."

Id. at 308.

Applying this concept to criminal libel, the *Ashton* Court stated:

"Convictions for 'breach of the peace' where the offense was imprecisely defined were similarly reversed in *Edwards v. South Carolina*, 372 U.S. 229, 236-238, 9 L.Ed.2d 697, 702, 703, 83 S.Ct. 680, and *Cox v. Louisiana*, 379 U.S. 536, 551-552, 13 L.Ed.2d 471, 482, 85 S.Ct. 453. *These decisions recognize that to make an offense of conduct which is 'calculated to create disturbances of the peace' leaves wide open the standard of responsibility. It involves calculations as to the boiling point of a particular person or a particular group, not an appraisal of the nature of the comments per se. This kind of criminal libel 'makes a man a criminal simply because his neighbors have no self-control and cannot refrain from violence.'*"

384 U.S. at 200. Emphasis added.

These principles were recently reiterated by the Supreme Court when it considered the Georgia "abusive

language" statute, Georgia Code §26-6303, which provides "any person who shall, without provocation, use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be guilty of a misdemeanor." *Gooding v. Wilson*, 31 L.Ed.2d 408 (U.S. 1972). Since the Georgia law had not been construed by Georgia courts as being limited to the "fighting words" prohibition permitted by *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942), the law was held to be facially unconstitutional. The Texas statute under consideration here contains the same expansive language unlimited by a narrowing interpretation.²² Consequently, Article 482 is also void for overbreadth.

(D) UNLAWFUL ASSEMBLY

Finally, it is contended that Articles 439 and 449 are facially unconstitutional.

Chapter One, Title Nine of the Texas Penal Code is entitled Unlawful Assemblies. The chapter's first provision is Article 439 and it defines "Unlawful Assemblies." The remaining twenty-two articles set forth various purposes for which such assemblies may be had and affix various punishments for such unlawful acts.²³ Apparently, the pleader must combine Article 439 with one of the other "offense" articles in the chapter, such as Article 449, in order to frame a complete criminal indictment.²⁴

The peculiar method of drafting statutes does not present any unusual problems since our approach to Article 439 does not require that we combine the two statutes or that we even consider Article 449 at all. This Court will assume for purposes of this opinion that Article 449, as

well as the remaining twenty-one articles of Chapter One, Title Nine, provides a legitimate state interest which if reasonably applied would be an acceptable restriction on First Amendment privileges.

ARTICLE 439

An "unlawful assembly" is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him the enjoyment thereof.

This statute in effect provides that an unlawful assembly is a meeting of three or more persons with intent to aid each other to deprive any person in any manner of a right which this Court has assumed the State may legitimately protect.

The statute comes within the principles stated by the Supreme Court in the case of *United States v. Robel*, 389 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 588 (1967):

"The statute quite literally establishes guilt by association alone, without any need to establish that an individual's association poses the threat feared by the Government in proscribing it. The inhibiting effect on First Amendment rights is clear."

This case makes it clear that statutory regulation of assembly must establish standards for identifying a threat to the public which is so important that it justifies inhibiting first amendment freedoms. The Constitution protects those who congregate with others for the purpose of peacefully discussing unlawful pursuits.²⁵ Any provision regulating assembly must require that an individual intend to

actively further the criminal aims of the assembly²⁶ and must also demand that before an assembly can be prohibited, these criminal aims must be manifested so as to pose a threat of substantial degree to public order.²⁷ But, a statute cannot punish assembling with an evil state of mind; it must require this sort of "overt act."

The Texas unlawful assembly statute makes no effort to limit its effect to assemblies which pose a threat to public order.²⁸ Indeed, quite the contrary is accomplished by condemning not only violence but "any other manner" of effecting the assembly's unlawful purposes.

The phrase "any other manner" breeds another defect. Violence is, of course, not protected by the First Amendment.²⁹ However, the Court has also ruled that if a regulation's scope covers peaceful as well as violent conduct, the State interest which requires restricting freedom of assembly must be carefully specified and the only reasonable restrictions may be placed on the time, place, duration, or manner of such conduct.³⁰ The Texas statute's prohibition of assembly by violence is proper, but when it goes on to include non-violent conduct by way of the "any-other-manner" clause without narrowing its impact through reasonable and objectively drawn restrictions as to the time, place, duration, manner and circumstances of assembly, it "sweeps unnecessarily broadly and thereby invade[s] the area of protected freedoms",³¹ so that it leaves too much discretion to the enforcer of the statute.³²

Article 439,³³ along with Articles 474 and 482 of the Penal Code and Articles 5454d §1 and 5154f of the Civil Statutes, is void for overbreadth.

Our decision to invalidate these statutes has involved a careful and cautious balancing of the individual's right

to speak with the right of all citizens to be safe on American streets. The laws that punish those who offend either of these precious rights are continually in need of maintenance and repair. Especially in these times of strife and unrest, the Legislature of this State must be sensitive to the goals of a changing society. Of the five statutes we here declare unconstitutional, *two are twenty-five years old, two have been on the books forty-seven years* and the last one was promulgated *eighty-five years ago*. No longer do they serve the purposes for which they were enacted or the Constitution of the United States.

V. THE RELIEF GRANTED

To summarize, it is the holding of this Court that Article 784 of the Texas Penal Code is not overly broad or vague and is therefore constitutional. However, it is our conclusion that Articles 5154d §1 and 5154f of Vernon's Texas Civil Statutes and Articles 439, 474 and 482 of the Texas Penal Code are unconstitutional and, therefore, null and void. Plaintiffs are entitled to a declaratory judgment to that effect.

In addition, plaintiffs are also entitled to a permanent injunction restraining the defendants not only from any future acts enforcing the statutes here declared void, but also restraining them from any future interference with the civil rights of plaintiffs and the class they represent. *Hairston v. Hutzler*, 334 F.Supp. 251 (W.D. Pa. 1971).

The Clerk is directed to file and enter this Opinion and provide counsel for all parties with true copies. By a separate simultaneous directive the parties will be instructed as to the preparation and submission of a decree to effectuate the judgment of the Court; that judgment is not

to be deemed entered until the signing and entry of the formal decree.

Done at Houston, Texas, on this 26th day of June, 1972.

/s/ John R. Brown
 John R. Brown, Chief Judge
 United States Court of Appeals
 /s/ Reynaldo G. Garza
 Reynaldo G. Garza
 United States District Judge
 /s/ Woodrow Seals
 Woodrow Seals
 United States District Judge

FOOTNOTES

1. *Boyle v. Landry*, 401 U.S. 77, 91 S.Ct. 758, 27 L.Ed.2d 696 (1971); *Samuels v. Mackell*, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971); *Perez v. Ledesma*, 401 U.S. 82, 91 S.Ct. 674, 27 L.Ed.2d 701 (1971); *Dyson v. Stein*, 401 U.S. 200, 91 S.Ct. 769, 27 L.Ed.2d 781 (1971); *Byrne v. Karalexis*, 401 U.S. 216, 91 S.Ct. 777, 27 L.Ed.2d 702 (1971).

2. See, *Academy, Inc. v. Vance*, 320 F.Supp. 1357 (S.D. Tex. 1970) for a pre-Younger example of a dismissal for failure to show a bad faith prosecution. See, *Duncan v. Perez*, 321 F.Supp. 181 (E.D. La. 1970), *aff'd* 445 F.2d 557 (5th Cir. 1971), *cert. den.* 30 L.Ed.2d 254 (1971) for a pre-Younger use of *Younger* principles in an action to enjoin re-prosecution where the evidence established that the re-prosecution was in bad faith for purposes of harassment and would deter and suppress the exercise of federally protected rights by Negroes in Plaquemines Parish.

3. Justice Brennan, the author of *Dombrowski*, concurred in *Younger* because of Harris' failure to allege a bad faith prosecution. Failing this, Harris' constitutional contentions could be adequately handled by the state court. That *Dombrowski* is in harmony with the "rule" of *Younger* can be seen in Justice Brennan's opinion for the Court in *Cameron v. Johnson* where he stated: "*Dombrowski* recognized, 380 U.S. at 483-485, the continuing validity of the maxim that a federal court shall be slow to act 'where its powers are invoked to interfere by injunction with threatened criminal prosecutions in a state court', . . . Federal interference with a State's good-faith administration of its criminal law 'is peculiarly inconsistent with out federal framework' and a showing of 'special circumstances' beyond the injury incidental to every proceeding brought lawfully and in good faith in requisite to a finding of irreparable injury sufficient to justify the extraordinary remedy of an injunction. 380 U.S. at 484. We found such 'special circumstances' in *Dombrowski* . . . In short, we viewed *Dombrowski* to be a case presenting a situation of the 'impropriety of [state officials] invoking the statute in bad faith to impose continuing harassment in order to discourage appellants' activities . . . ' 380 U.S. at 490." 390 U.S. 611, at 618-619.

4. *Golden v. Zwickler*, 394 U.S. 103, 118, 89 S.Ct. 956, 22 L.Ed.2d 113 (1969), quoting, *Maryland Casualty Co. v. Pacific Oil Co.*, 312 U.S. 270, 273, 61 S.Ct. 510, 85 L.Ed. 826 (1941). See also *Zwickler v. Koota*, 389 U.S. 241, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967).

5. *Samuels v. Mackell*, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971), applies the *Younger v. Harris* injunction requirement to the area of declaratory judgments. These prerequisites for considering both injunctive and declaratory relief are met here.

6. E.g., *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 451 (1965). See also, *Fortas, Concerning Dissent and Civil Disobedience*, 7-25 (1968).

7. The classic definition of "vagueness" comes from *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 70

L.Ed. 322 (1926); "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process . . ." See, *Cameron v. Johnson*, 390 U.S. 611, 615-16, 88 S.Ct. 1335, 20 L.Ed.2d 683 (1968); *Zwickler v. Koota*, 389 U.S. 241, 249, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967); *Ashton v. Kentucky*, 384 U.S. 195, 200-201, 86 S.Ct. 1407, 16 L.Ed.2d 469 (1966); *Edwards v. South Carolina*, 372 U.S. 229, 238, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963); *Wright v. Montgomery*, 406 F.2d 867 (5th Cir. 1969). See generally, *Amsterdam, The Void for Vagueness Doctrine*, 109 Pa. L. Rev. 67 (1960).

8. In *Zwickler v. Koota*, 389 U.S. 241, 250, 88 S.Ct. 390, 19 L.Ed.2d 444 (1967) the Court said "overbreadth . . . offends the constitutional principle that 'a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.' NAACP v. Alabama, 377 U.S. 288, 307, 12 L.Ed.2d 325, 338, 84 S.Ct. 1302." See *Stromberg v. California*, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931); *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); *Cantwell v. Connecticut*, 310 U.S. 296, 304-7, 60 S.Ct. 900, 84 L.Ed. 1213 (1941); *Schneider v. State*, 308 U.S. 147, 161, 60 S.Ct. 146, 84 L.Ed. 155 (1939); *Dombrowski v. Pfister*, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965); *University Committee To End War in Viet Nam v. Gunn*, 289 F.Supp. 469, 473-74 (W.D. Tex. 1968) (Three-Judge Court), appeal dismissed want of jurisdiction, 399 U.S. 383, 90 S.Ct. 2013, 26 L.Ed.2d 684 (1970). See generally, *Amsterdam, The Void For Vagueness Doctrine*, 109 Pa. L. Rev. 67 (1960).

9. See, *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 452, 13 L.Ed.2d 471 (1965); *Shuttlesworth v. Birmingham*, 394 U.S. 147, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969); *Gregory v. Chicago*, 394 U.S. 111, 89 S.Ct. 946, 22 L.Ed.2d 134 (1969); Note, *Regulation of Demonstrations*, 80 Harv. L. Rev. 1773, 1773-74 (1967).

10. See, *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed. 2d 471 (1965); *Cameron v. Johnson*, 390 U.S. 611, 88 S.Ct. 1335, 20 L.Ed.2d 182 (1968). See generally, *Brown v. Louisiana*, 383 U.S. 148, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966); *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969).

11. See, *Amalgamated Food Employers Union v. Logan Valley Plaza, Inc.*, 391 U.S. 308, 88 S.Ct. 1601, 20 L.Ed.2d 603 (1968); *Adderly v. Florida*, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 140 (1966).

12. See, *Lovell v. Griffin*, 303 U.S. 444, 58 S.Ct. 656, 82 L.Ed. 949 (1938); *Schneider v. State*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155 (1939); *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); *Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941); *Poulos v. New Hampshire*, 345 U.S. 395, 73 S.Ct. 760, 97 L.Ed. 1105 (1953); *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965); *Shuttlesworth v. Birmingham*, 382 U.S. 87, 86 S.Ct. 211, 15 L.Ed.2d

176 (1965); *Cameron v. Johnson*, 390 U.S. 611, 88 S.Ct. 1335, 20 L.Ed.2d 182 (1968). See generally, Fortas, *Concerning Dissent and Civil Disobedience*, 12-25 (1968).

13. See, *Thornhill v. Alabama*, 310 U.S. 88, 97, 60 S.Ct. 736, 84 L.Ed.2d 1093 (1940), where the Court condemned a statute which prohibited almost all picketing. The Court stated that the regulation "does not aim specifically at evils within the allowable area of State control, but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of press." See also, *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965); *Edwards v. South Carolina*, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963); *Cameron v. Johnson*, 390 U.S. 611, 88 S.Ct. 1334, 20 L.Ed.2d 182 (1968); *Davis v. Francois*, 395 F.2d 731 (5th Cir. 1968); Note, *Regulation of Demonstrations*, 80 Harv. L. Rev. 1773, 1773-74 (1967).

14. The Mississippi Anti-Picketing Law, 2A Miss. Code Ann. §2318.5 (Sup. 1966), provided:

"1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any public premises, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi, or any county or municipal government located therein, or with the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or unreasonably interfere with free use of public streets, sidewalks, or other public ways adjacent or contiguous thereto."

15. See, *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed. 2d 471 (1965); *Cameron v. Johnson*, 390 U.S. 611, 88 S.Ct. 1335, 20 L.Ed.2d 182 (1968).

16. Art. 5154f. Secondary strikes, picketing and boycotts prohibited

Section 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

Section 2. As used in this Act:

a. The term "labor union" means every association, group, union, national and local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing in part for the purpose of protecting themselves and improving their working conditions, wages, or employment relationships in any manner, and shall include the local, state, national and international affiliates of such organizations or unions.

b. "Secondary strike" shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

c. The term "picket" shall include any person stationed by or acting in behalf of any organization for the purpose of inducing anyone not to enter the premises in question; or for apprising the public by signs, banners, or other means, of the existence of a labor-dispute at or near the premises in question; or for observing the premises so as to ascertain who enters or patronizes the same; or any person who by any means follows employees or patrons of the place being picketed either to or from such place so as to either observe them or to attempt to persuade them to cease entering or patronizing the premises being picketed.

d. The term "secondary picketing" shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

e. The term "secondary boycott" shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damages to any person, firm or corporation for whom they are not employees, by

(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

(2) Picketing such person, firm or corporation; or

(3) Refusing to handle, install, use or work on the equipment or supplies of such person, firm or corporation; or

(4) Instigating or fomenting a strike against such person, firm or corporation; or

(5) Interfering with or attempting to prevent the free flow of commerce; or

(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor-dispute.

f. The term "employer" means any person, firm or corporation who engages the services of an employee.

g. The term "employee" shall include any person, other than an independent contractor, working for another for hire in the State of Texas.

h. The term "labor dispute" is limited to and means any controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, the controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee members only of such union, a labor dispute within the meaning of this Act.

17. Judge John R. Brown writing for the Fifth Circuit in *Burr v. N.L.R.B.*, 321 F.2d 612, 621 (5th Cir. 1963) stated:

"Notwithstanding sweeping and earlier broad pronouncements in terms of free speech, it is now recognized that Congress or the states may in enforcing a valid public policy, 'constitutionally enjoin peaceful picketing aimed at preventing effectuation of [a policy against coercive restraints against employers]" See also, *Wooten v. Ohler*, 303 F.2d 759, 764 (5th Cir. 1962).

18. See, *Dallas General Drivers v. Wamix*, 295 S.W.2d 873 (Tex. 1956); *Construction and General Labor Union v. Stephenson*, 225 S.W.2d 958 (Tex. 1950); *International Union of Operating Engineers v. Cox*, 219 S.W.2d 787 (Tex. 1949); *Ex Parte Henry*, 215 S.W.2d 588 (Tex. 1948).

19. *Thornhill v. Alabama*, 310 U.S. 88, 97 60 S.Ct. 736, 84 L.Ed. 1093 (1940).

20. It has been argued that a State or municipality may restrict its streets completely to traffic. See *Cox v. Louisiana*, 379 U.S. 536, 55 n.13, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965).

21. Since the submission of this case the Texas Legislature has amended Article 474 of the Penal Code to define eleven instances of punishable "disorderly conduct." Acts 1969, 61st Leg., p. 1510, ch. 454, §1, emerg. eff. June 10, 1969. The amended statute, for the most part, is aimed at violent behavior, such as interference with public meetings and speakers, and with judicial and legislative proceedings. As such it is a very different statute from the old Article 474, under consideration here, which makes speech itself an offense. The validity of the new statute is not before this Court since the plaintiffs are not charged with its violation, nor can they be, because of the *ex post facto* provisions of the federal and state constitutions. However, the old statute is still in existence for the purposes of any pending prosecutions and the challenge to its validity is not mooted by the enactment of the new article.

22. The only decision which approximates the *Chaplinsky* doctrine is *Deaton v. State*, 110 S.W. 69 (Tex.Crim.App. 1908) where it was stated that "the purpose of the statute [is] both to discourage and punish the use of abusive language in respect to matters in controversy, the effect of which would and might be to provoke breaches of the peace and to cause bloodshed." *Id.* at 70. In *Deaton* the defendant's offense had been to swear at a trespasser, who was gathering pecans on the defendant's property, in the presence of the trespasser's sisters. In *Bumgarner v. State*, 142 S.W. 4 (Tex.Crim.App. 1911) the defendant had driven his stepdaughters from his house by calling them "liars," "bitches," and "whores" to their faces. In *Easter v. State*, 160 S.W. 74 (Tex.Crim.App. 1913) the unfortunate defendant had had the temerity to call a man a "liar" when he accused the defendant of not paying a debt. The fellow walked away and then returned with a plank with which he beat the defendant breaking his collar-bone. The defendant's conviction was affirmed. The only post-*Chaplinsky* case, *Duke v. State*, 328 S.W.2d 1189 (Tex.Crim.

App. 1959) makes no mention of the "fighting words" limitation. It is obvious that the statute's purpose, as written and interpreted, was to protect the ears of a more innocent age and that its scope is much wider than the "fighting words" coverage permitted by *Chaplinsky*. The *Chaplinsky* "fighting words" exception itself has been criticized as a concept "so vague that no lawyer can adequately guide his client contemplating a public speech." Anteau, *Modern Constitutional Law* (1969), §1:7, p. 23.

23. Art. 449. To Prevent any person from pursuing his labor.

If the purpose of the unlawful assembly be to prevent any person from pursuing his labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another, the punishment shall be by fine not exceeding five hundred dollars.

24. Ex Parte Bracey, 152 S.W. 2d 763, 764 (Tex.Crim.App. 1941).

25. *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969). See, *Hunter v. Allen*, 286 F.Supp. 830, 836-37 (N.D. Ga. 1968): "The court is constrained to believe that the First Amendment permits assembly even for unlawful purposes so long as it is limited to a peaceable discussion of such purpose." *Hunter* was affirmed by the Fifth Circuit at 422 F.2d 1158 and then reversed by the Supreme Court, 401 U.S. 989, 91 S.Ct. 1237, 28 L.Ed.2d 528 (1971) in light of the *Younger* cases. See also, *Stromberg v. California*, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931); *Thornhill v. Alabama*, 310 U.S. 86, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); *Terminiello v. Chicago*, 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed. 1131 (1948); *Garner v. Louisiana*, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed.2d 207 (1961) (Harlan, J., concurring); *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 12 L.Ed.2d 471 (1965); *Edwards v. South Carolina*, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed. 697 (1963).

26. *United States v. Robel*, 389 U.S. 258, 365-66, 88 S.Ct. 419, 19 L.Ed.2d 508 (1967): "That statute casts its net across a broad range of associational activities, indiscriminately trapping membership which can be constitutionally punished and membership which cannot be so proscribed. It is made irrelevant to the statute's operation that an individual may be a passive or inactive member of a designated organization, that he may be unaware of the organization's unlawful aims, or that he may disagree with those unlawful aims." See, *Rollins v. Shannon*, 292 F.Supp. 580, 592 (E.D. Mo. 1968) (Three-Judge Court) vacated 401 U.S. 988, 91 S.Ct. 1235, 28 L.Ed.2d 527 (1971).

27. *United States v. Robel*, 389 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 508 (1967); In *Rollins v. Shannon*, 292 F.Supp. 580, footnote 26 supra, the court stated in upholding a Missouri unlawful assembly provision that the statute was valid because it could only be employed "when the intent to commit criminal acts with force and violence is manifested." (Emphasis added). *Id.*, at 590. The case of *Devine v. Wood*, 286 F.Supp. 102 (M.D. Ala.

1968) (Three-Judge Court) would appear to support this position since the court upheld a statute which required that the assembly be conducted in such a manner as to cause persons to reasonably believe the peace would be disturbed. Cf., *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940): "When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious." *Herndon v. Lowry*, 301 U.S. 242, 57 S.Ct. 732, 81 L.Ed. 1066 (1937); *Feiner v. New York*, 340 U.S. 315, 71 S.Ct. 303, 95 L.Ed. 295 (1951).

28. The Supreme Court has found the Ohio Criminal Syndicalism statute unconstitutional. In a per curiam opinion the Court held:

"Accordingly, we are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Such a statute falls within the condemnation of the First and Fourteenth Amendments."

Brandenburg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed. 430 (1969). The *Brandenburg* case proceeded through the Ohio judicial system and was appealed to the U. S. Supreme Court. On the other hand, *Younger* began in the federal system.

29. *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); *Feiner v. New York*, 340 U.S. 315, 71 S.Ct. 303, 95 L.Ed. 295 (1951); *Devine v. Wood*, 286 F.Supp. 102, 106 (M.D. Ala. 1968) (Three-Judge Court); *Rollins v. Shannon*, 292 F.Supp. 580, 591 (E.D. Mo. 1968) (Three-Judge Court) vacated 401 U.S. 988, 91 S.Ct. 1235, 28 L.Ed.2d 527 (1971).

30. *Cox v. Louisiana*, 379 U.S. 536, 558, 85 S.Ct. 453, 13 L.Ed. 2d 471 (1965). See, Note, *Regulation of Demonstrations*, 80 Harv. L.Rev. 1773, 1773-74 (1967).

31. *Zwickler v. Koota*, 389 U.S. 241, 250, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967). See also, *NAACP v. Alabama*, 377 U.S. 288, 307, 84 S.Ct. 1302, 12 L.Ed.2d 325 (1964).

32. See, *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); *Ashton v. Kentucky*, 384 U.S. 195, 86 S.Ct. 407, 16 L.Ed.2d 469 (1966); *Shuttlesworth v. Birmingham*, 382 U.S. 87, 86 S.Ct. 211, 15 L.Ed.2d 176 (1965); *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 3 L.Ed.2d 471 (1965); *Edwards v. South Carolina*, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963).

33. Defendants have urged that our decision regarding Article 439 should be controlled by the case of *Litchen v. State*, 434 S.W.2d 128 (Tex.Crim.App. 1968). The appeal in *Litchen* was dismissed "for want of a substantial federal question" by the Supreme Court of the United States. *Litchen v. Texas*, 393 U.S. 86 (1968). This court considers this dismissal an affirmation of the lower court's result only, and since neither the Supreme Court nor the Texas Court of Criminal Appeals discussed the applicable constitutional principles we are persuaded to move on to our own consideration of the merits of plaintiff's challenge to this statute.

LA VERDAD

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EDITORIAL EL GOBERNADOR DEBERIA HACER ALGO EN LA LUEGA!!

El editor de este semanario, Sr. Santos de la Paz, le informó, por telegrama al Procurador General de los Estados Unidos, Ramsey Clark, de la situación que prevalece en el valle del Rio Grande. Y, en una semana o dos, el Sr. de la Paz propone visitar personalmente al Gobernador John B. Connally en Austin, con el propósito de interesar al jefe ejecutivo del estado que intervenga en el asunto de los abusos de la unión en Rio Grande City.

Tratar de obtener asistencia de los oficiales de gobierno siempre es un proceso desproporcionado porque los responsables sirvientes públicos son los últimos que manejan las caritas. Muchas de estas misivas pasan primero por muchas otras manos antes de llegar a la propia persona y mucho tiempo se consume inutilmente. Después de que llega la carta al oficial indicado, éste toma todo su tiempo para estudiar el caso presentado y muy probable tenga que consultar a otros colegas antes de hacer algún comentario sobre ello.

Las contestaciones de estos oficiales casi siempre son breves y todo lo que estos le dicen a uno, es que ellos investigarán el problema y más después nos informarán de los especificados pasos que la dicha oficina pueda tomar.

La oficina del gobernador del estado, John B. Connally, que naturalmente, está más cerca a casa, que la que está en Washington, D.C., es menos difícil de penetrar y una de varias razones es el hecho de que nosotros conocemos todo el pelotón de los representantes y el senador estatal de esta región. Y ellos, en turno, conocen de nuestros esfuerzos y siempre están bien versados en lo que se desarrolla periódicamente en el Sur de Texas.

Nosotros creemos sinceramente que que TODOS nuestros representantes y nuestro senador, están bien enterados de lo que pasa en el valle del Rio Grande. Estos señores se han dado cuenta de todos los alborotos de la unión en Rio Grande City, donde tres hombres han sido arrestados con cargos de personificar a un oficial de ley, de perturbar el tráfico, y otros cargos más. Ellos andaban usando "badgen" (escudo) de policía especial, como esas que se hayan en las capillas de dólares.

Estos oficiales del estado saben que la mayoría de los hombres que la unión tiene en su campamento en el valle, son criminales registrados y que los records de estos están en las oficinas de nuestro periódico. Estos señores también saben que la obligación principal de ellos es para los ciudadanos que los eligieron a ellos al puesto, y lo importante ahorita es aplicar el furor y la supremacía que brota con cada oscudadura que la unión provoca. Y más sobreabundante, todavía, es que estos señores saben de que algo más grande y peligroso puede resultar de todo esto, y poner en peligro a mucha gente.

El Gobernador Connally es un hombre sensible, quizá uno de los más astutos que hemos tenido en Austin. El vio que la marcha de los trabajadores agrícolas era una MENTIRA, y fuertemente rechazó verlos en Austin el día del Trabajo (Labor Day). Escaberrizado dicha

marcha estaban dos hombres del circo, uno de ellos un ministro Bautista, y el otro un Cura Católico, y ambos trataban enconadamente de convencer al gobernador de que el Gobierno de sus problemas.

El se hizo ruido. El tenía mucha razón de hacerlo!

Qué fue lo que pasó con estos dos tan importantes hombres de la Iglesia, que tan sinceramente le prometieron a los trabajadores que los llevarían hasta los escalones de la Casa Blanca en Washington, D.C.? Estos dos chavos eran tan chucosos tal y como la misma marcha de los trabajadores, y el gobernador lo sabía bien, y si les hubiese hecho caso a las peticiones de ellos, el hubiese invitado a todo Texoma. Tanto el ministro como el cura han sido corridos de dondequiera que ellos han estado. Les ha guiado metraje en asuntos donde suena el dinero y escándalos. Nosotros tenemos aclaraciones de personas que han conocido a los dos y estas indican de que los dos son una deshonra para su respectiva religión.

El editor Sr. de la Paz habló con el cura y pronto se dio cuenta de que esto no era cura ni nada, solo era un sinvergüenza de marca. Habla-ba como un trampa y acciaba todavía peor. Su vocabulario era apachucado, y en fin, para nuestro editor, este no era más cura que Fidel Castro. Y cuando el editor se lo dijo en su casa, este se puso su sombrero y se largó.

El gobernador debe de mandar a los rinchos al Valle.

Y nosotros creemos que lo hará.

The Political Corner

By JUAN VENTURA

I have been asked why I want to see political change in this country. I don't know that I will be spending for the future, but I think the public should know what goes on in this country and what the results are. I don't want to see a country which can not be ruled unless you are the "man's" son.

I don't know that I will be spending for the future, but I think the public should know what goes on in this country and what the results are. I don't want to see a country which can not be ruled unless you are the "man's" son.

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"PROBLEMAS DE LOS HIJOS"

Diecisiete millones de lectores siguen en todo el mundo los consejos del doctor Spock, sus lecciones directas, prácticas, amenas son sumamente instructivas. En este tratado de PROBLEMAS DE LOS HIJOS se han recopilado las más importantes referencias a los problemas más difíciles que actualmente se plantean a los padres: los relativos a las crisis de la adolescencia. De la rebeldía a la delincuencia, del aislamiento huraño a las bandas de muchachos, de la sistemática oposición a los padres hasta la a más peligrosas aventuras, todos los peligros aparecen en este libro analizados con infinidad de ejemplos, desde su primera gatación cuando el adolescente de hoy no era más que un niño.

El doctor Spock ayuda a los padres a descubrir a tiempo esos problemas y a remediarlos. Todo padre o madre interesado en sus hijos hallarán en esta obra el caso que les interesa y las normas concretas para afrontar la difícil etapa en que el desarrollo físico, mental y sexual forja la personalidad definitiva de sus hijos a través de las tormentas de la adolescencia.

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Santa Fe, New Mexico. Phone Tolu 3-6811

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SENS. EDWARD KENNEDY, HARRISON WILLIAMS AND YARBOROUGH EXAMPLES OF MEDIOCRITY OF U.S. SENATE

Entre el Gobierno que hace el mal y el Pueblo que lo consiente, hay cierta Solidaridad vergonzosa

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La Verdad

THE ONLY SPANISH-ENGLISH WEEKLY NEWSPAPER PUBLISHED IN NUECES COUNTY

No hay mas que un poder;
la conciencia, el servicio de la justicia;
no hay mas que una gloria;
el bien, el servicio de la verdad.

Victor Hugo

Sección de la Paz, Editor and Owner

Sección de la Paz, Editor and Owner

LA VERDAD NO PAGA FISCOS EXOTICISMO

Friday, June 30, 1967

Page 2

Telegram Sent To Members of U.S. Senate Subcommittee on Migratory Labor

EDITORIAL

THREE OF A KIND

We know that some of you will believe what we are about to say but as sure as taxes and death, we were positive that the United States Senate subcommittee on migratory labor, composed of Sens. Harrison Williams, D-N.J., chairman, Edward Kennedy, D-Mass., and Ralph Yarborough, D-Texas would come to the Rio Grande Valley and blast Capt. Allee and the Texas Rangers and belittle Gov. John B. Connally.

The whole thing was a political show for the benefit of Sen. Ralph Yarborough and sponsored by the union and paid by all of us the taxpayers. The work that all three of these senators did during the hearings plus the undignified manner in which they handled the proceedings and the degree of responsibility they demonstrated in the delicate matter at hand, dealing with man's livelihood, domestic inequality and life itself, we'd say they are NOT worth even the \$1.25 an hour the union is fighting for.

If ever any group of men representing the government of the United States disgraced the emblem, integrity, solemnity and the high standards of nobility which have characterized the strongest advocates of our democratic system, the aforementioned Senate subcommittee is it.

The committee, THREE OF A KIND, gave us this to the study of the problems in Rio Grande City. It cares little, if at all, what happens to these poor working, for whatever wages, if the govern will decide to mechanize. Or, if the govern, forced by the union, will have to let go several people in order to afford the minimum wages for a few. There are people now living on the pawns' land and occupying a shack belonging to the pawn. The pawn pays the utilities, insurance and lends them money in emergencies and so forth. What will become of these poor folks? There a multitude of situations that could suddenly happen these unfortunate residents, who, because of their lack of education, must face these humiliating and tormenting slights.

No one in Rio Grande City has indicated that he wishes to become a union member. This was proven last week when a union official wanted the men members in the courtroom to raise their hands. There was none.

There and then, the subcommittee from Washington should have put a halt to their idleness and for once taken the time to sit on things in order. It knew at the beginning that union leaders were lying; that they were a strike there; that allegations against the conduct of the Rangers was grossly exaggerated. The senators knew these things and plenty more... yet, all three democrats, show their influence in favor of the union and against the govern and the Texas Rangers and Gov. Connally.

Only one senator, a Republican at that, Sen. Paul Fannin, R-Arkansas, who attended the hearings in its last day, showed any prudence. He disabused said that things as they are now prove that there is no strike and that there is no union in Rio Grande City.

(Continued on last page)

Honorables Visitantes de Celaya en Casa del Sr. Manuel Ponce y Fam.

El Sr. José Torres R. y su esposa, la Srta. María Torres, propietarios de la casa, recibieron a los señores Lázaro Cárdenas y a su familia, en la casa del Sr. Manuel Ponce y familia, en la ciudad de Celaya, Guanajuato, el día 29 de junio de 1967.

El señor Lázaro Cárdenas, quien es un hombre de gran estatura y de gran fuerza física, se encuentra en la ciudad de Celaya, Guanajuato, en la casa del Sr. Manuel Ponce y familia, en la ciudad de Celaya, Guanajuato, el día 29 de junio de 1967.

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Rusia y Francia Quieren Retirar a los E. U. A. de Viet Nam

El primer ministro de Francia, Charles de Gaulle, y el primer ministro de la Unión Soviética, Leonid Brezhnev, se reunieron en la ciudad de París, Francia, el día 29 de junio de 1967.

FILLINGS

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El Vaticano Suspende a un Obispo

El Papa Paulo VI suspendió al obispo de la diócesis de San Antonio, Texas, por haberse involucrado en actividades políticas y administrativas.

Ingresaron 22 a la Marina

El Cuerpo Civil y Militar, de la Marina de los Estados Unidos, ingresaron a la Marina de los Estados Unidos, el día 29 de junio de 1967.

El Cuerpo Civil y Militar, de la Marina de los Estados Unidos, ingresaron a la Marina de los Estados Unidos, el día 29 de junio de 1967.

Ganaron los Bandidos en el Poker

Los bandidos ganaron en el juego de poker, en la ciudad de Celaya, Guanajuato, el día 29 de junio de 1967.

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Friday, June 30, 1967

Below is a copy of the telegram of 182 words Santos de la Paz, editor and publisher of LA VERDAD sent to the members of U. S. Senate subcommittee, holding hearings at Edinburg, Texas last week:

To the Honorable: Senators: Harrison Williams, Edward Kennedy and Ralph Yarborough: members of the Senate Subcommittee on Migratory Labor, Hidalgo County Courthouse, Edinburg, Texas:

Will you please answer the following questions:

- 1.-Do you wish for "La Casita" to close down and throw its employees on relief?
- 2.-Do you know if La Casita wages are in conformity with the requirements of the Labor Board?
- 3.-Do you know that most all of the Union representatives, from outside the state, have communistic affiliations?
- 4.-Do you know that some of them have lengthy criminal records?
- 5.-Do you wish to encourage the infiltration of communism in our country?
- 6.-Who called you to the Rio Grande Valley to investigate this matter?
- 7.-Do you know of any of the valley farmers who belong to the Union?
- 8.-Do you know that Union men in the valley have broken all Civil Rights?
- 9.-Have the present La Casita employees ever complained of bad treatment and low wages?
- 10.-Do you know that most all who have taken part in the strike are on the welfare rolls and NEVER work?

(signed)
SANTOS DE LA PAZ
Editor and Publisher,
LA VERDAD.

Editor's note: This wire was received in ample time, but the subcommittee ignored it. The truth is that none of the three is capable of answering these questions because they are not qualified to do so. The situation in Rio Grande City is as plain as our nose, yet these three senators act entirely opposite that trend. They jumped on the oppressed band-wagons and took the oppressed still oppressed.

Please pass these questions to your audience and then on to the press.

Dinero Para más Trabajos

El senador de Washington, el Sr. Charles McNichols, ha anunciado que el gobierno de los Estados Unidos, en San Antonio y Houston, Texas, está en camino de crear 10 millones de dólares en nuevos trabajos de construcción y de mantenimiento de las carreteras y de las puentes.

Vandalismo en Dallas

Se han reportado varios casos de vandalismo en Dallas, Texas, el día 29 de junio de 1967.

de Alabama en Houston

Se han reportado varios casos de vandalismo en Houston, Texas, el día 29 de junio de 1967.

Johnson en San Antonio

El Sr. Lyndon B. Johnson, presidente de los Estados Unidos, visitó a la ciudad de San Antonio, Texas, el día 29 de junio de 1967.

FALLECIO

Se ha reportado la muerte de un hombre en la ciudad de Celaya, Guanajuato, el día 29 de junio de 1967.

By SANTOS DE LA PAZ
LA VERDAD Editor

He said that one strike was in Elba where there was only one policeman in town and the people did not get anywhere. He said there was peace and quiet and the Texas Rangers were not needed then. Carson, is the fellow I ran out of my office. He thinks and talks like a Communist; so I told him to get the

Yes, sir, the whole thing was rigged up, and because three senators promptly decided to show their scorn for valley growers, the WHOLE United States Senate will have to share the shame and humiliation of not being that important cog in our government's machinery that has always stood for the highest principles our forefathers have fought and perished for.



encadenados de espaldas para Americanos de
Dondequiera Misioneros en voz (de aque-
rda e derecha) El Lta. Adm. J. Har-
nold, Presidenta Nacional de UJAL, Sr.
Harry G. Taylor, representante del Departa-
mento de Trabajo, Rector, Sr. y Sr.
de Relaciones de Empleados, Rep. Laura
Cruz, y Sr. George B. McCullough, Ad-
ministrador de Relaciones de Empleados.

ers and management consider their situation and, hopefully, reverse a meeting of minds. But this law is applied usually to crimes that impede the economy, or deprive large areas of transportation that might shake off supplies and put masses of people at the mercy of the streets. But what does it mean that sometimes are just as mean for a much smaller but no less a group of people?—The law-baiting critics against the possible interest should be extended to the states to create greater to halt them when they are obviously causing distress to innocent, good, mean.

FAVORITISM, E. C. RECORD
"There is a general feeling of
the government here. I mean
they are feeling that if we can
have our citizens out of the
we can't get out more of the
particular kind of money that
we are going to Washington. More
and more we are beginning to
realize that the thing that is
most hard to produce because it
is not easy and there are
a lot of things to be done."

MADRON WIN REPORT:
 "An area which continues to grow increasingly confusing is that of grapes. It has been generally recognized by some people that any three- or more-pronged or a product happens to put the same price on their product as retail that is almost guilty of collusion. Pricing and other related facts. But, there has recently been appearing some results of retail outlets which indicate that there are differences in prices of grapes from stores to stores or areas to areas. These considerations have been played out to the public as an indication of mismanagement, even profit taking, and other related facts."

PAINTVILLE, KY., RONALD:
"We have finally determined just what the Postal Service had in mind when it introduced the new, heralded Zip Code procedure. By providing all of us with numbers, our mail delivery is to be expedited. All the various post offices have to do is look at the number and zip... Of course, there is the little problem that to make a small printer or small business to set up the procedure. And then, too, it only takes about twice as long to get

EL ESCADO KANE, TOWNS
 "Local State revenues will grow over \$6 million for education and in 1937, according to a survey made by the Peter Ochs Engineers, of Baker. When returns are added to cover the large sum of \$14 million in 1937 to pay off a \$500,000 loan by the State, it is a great day for them in their progress."

[illegible]

La Unión es una sola palabra o
cuenta de grande cuenta. El dinero
no solo más que poder más y
más más carísimo, porque así se
dice, que es la recompensa de
su trabajo.

La Unión quiere que el dueño de
cuentas pague y pague hasta llegar
a los mil.

Concretamente, cada palabra
"la Unión" que "la Unión" que
"la Unión" que "la Unión" que
trabajo y la demanda de ganar
tanta tarea que el gobierno
de cuenta con tener en cuenta la
quiere de los negocios. Que la in-
porta de cualquiera de cualquier
en los países americanos hay
que pagar.

Seguro que no porque el gobierno
hay un solo país en la Unión, la
cuenta de cualquier o no puede
separar en los países de América, por
no a pagar, así se podría no decir
a los mil.

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hay un solo país en la Unión, la
cuenta de cualquier o no puede
separar en los países de América, por
no a pagar, así se podría no decir
a los mil.

KNEELAND, H. J. SWAN: "The last session of Congress, now under way, will be faced with still more demands for increased spending even though the last Congress passed scores of new laws that add to the high budget and bigger government. It is up to government officials to urge the members of Congress to practice fiscal restraint and to cut Federal spending. This is one positive way to curtail the forces of inflation and to make certain each spending dollar goes farthest."

DALLAS, GWY. (Continued):
"We see that the U. S. Supreme Court, in a 5-4 decision, has ruled in favor of the government. The government has won the case. The Court said the rule was a violation of the rights of the individual. The law was unconstitutional. The Court, by definition, advocates the overthrow of our government. It will not do so. National security is not at stake. It is a political issue."

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BRILLANTINA SCOTT 4 ROSAS
PIDALA HOY MISMO EN SU FARMACIA O TIENDA FAVORITA**

Appendix I

REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE
 FOR THE YEAR 1887

THE LAND OFFICE, LONDON, 1888

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APPENDIX "B"

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

**FRANCISCO MEDRANO,
KATHY BAKER, DAVID LOPEZ,
GILBERT PADILLA, MAGDALENO
DIMAS, BENJAMIN RODRIGUEZ,
and UNITED FARM WORKERS
ORGANIZING COMMITTEE,
AFL-CIO,**

Plaintiffs

**CIVIL ACTION
No. 67-B-36**

vs.

**A. Y. ALLEE, JACK VAN CLEVE,
JEROME PREISS, T. H. DAWSON,
DR. RENE SOLIS, RAUL PENA,
ROBERTO PENA, JIM ROCHESTER,
B. S. LOPEZ, and S. H. DENSON,
*Defendants***

**DIXIE, WOLF & HALL, CHRIS DIXIE, ROBERT E. HALL,
and GEORGE C. DIXIE of Houston, Texas
*Attorneys for the Plaintiffs***

**CRAWFORD MARTIN, Attorney General of Texas,
HAWTHORNE PHILLIPS, ALLO B. CROW and
GILBERT PENA, Assistant Attorneys General of Texas,
and ATLAS, SCHWARZ, GURWITZ & BLAND,
GARY GURWITZ of McAllen, Texas,
LUTHER E. JONES, Corpus Christi, Texas
FRANK R. NYE, JR., Rio Grande City, Texas
*Attorneys for the Defendants***

**Before BROWN, Chief Judge
United States Court of Appeals
GARZA, District Judge, and
SEALS, District Judge**

MEMORANDUM AND ORDER

MEMORANDUM AND ORDER:

On June 26, 1972, this Court entered its opinion in this case holding that the Plaintiffs were entitled to certain declaratory and injunctive relief. 347 F.Supp. 605. In accordance with that opinion the Plaintiffs have submitted a proposed final decree. The Defendants through the Attorney General, have submitted their objections and an alternate decree. The Plaintiffs have responded with a memorandum and a revised proposed final decree. The Defendants' objections will be considered in their numerical order.

The Defendants have made no objections to paragraphs 1 through 7 of the proposed final decree.

Defendants' Objection No. 1. Defendants object to paragraph 8 as repetitious in that it goes into evidentiary matters which are inappropriate to a final decree. The Plaintiffs respond that the language to which the Defendants object is appropriate in that it shows that the statutes were used as part of the illegal conduct and that this fully satisfied the requirements of *Younger v. Harris*, 401 U.S. 37 (1971).

This objection will be overruled.

Defendants' Objection No. 2. The Defendants object to paragraph 9 of the proposed final decree in that as proposed the paragraph does not reflect the Court's opinion which held the entirety of section 1 of article 5154d unconstitutional. Plaintiffs respond that subdivision 2 of section 1 is not included because in Plaintiffs' opinion the record does not show any arrest under this specific subdivision.

The objection will be sustained and the paragraph expanded to include subdivision 2 of section 1. The record contained many instances of arrests for "mass

picketing." The arrest on May 31, 1967 (p. 13 of the opinion, 347 F.Supp. 616) is an example of such an arrest. It is clear from a reading of *Sabine Area B.T.C. v. Temple Associates, Inc.*, 468 S.W.2d 501 (Tex.Civ. App. - Beaumont, 1971, no writ), that a charge of "mass picketing" presents both subdivisions to the Texas trial court. Thus both subdivisions were properly before this Court. The Court notes that the constitutionality of the definitions of "picket" and "picketing" were not challenged in this suit, that no argument was presented on these points, and the Court does not pass on their validity.

Defendants' Objection No. 3. The Defendants object to paragraph 10 of the proposed final decree in that it is incomplete on the theory that the Court held unconstitutional the entirety of sections 1 and 2, article 5154f. The Plaintiffs respond that the Court dealt specifically only with those sections and subparagraphs set out in the Plaintiffs' proposed final decree. The Plaintiffs point out that the Defendants made no use of paragraph e(3) of section 2 of article 5154f, and that this is why that particular provision has not been included in the proposed final decree.

The Defendants' objection will be overruled. The Court's opinion did not deal with paragraphs a, c, f or g of section 2. These are definitions of the terms, "labor union," "picket," "employer," and "employee."

Paragraph h of section 2 should be added to the decree as being a part of the statute declared unconstitutional, since the Court did deal with the term "labor dispute" at 347 F.Supp. 627. There is no evidence in the record showing any use by the Defendants of paragraph e(3) of section 2 and there is no reason to include that provision within the decree.

Defendants' Objection No. 4. Defendants object that the language of paragraph 11 of Plaintiffs' proposed final decree is unclear. The Plaintiffs concede this point and would reword the decree to conform to the proposal of the Defendants.

The objection will be sustained.

Defendants' Objection No. 5. The Defendants object to paragraph 12 of the proposed final decree on the theory that it is incomplete in that the Court held unconstitutional the entirety of Article 474 of the Texas Penal Code.

The Plaintiffs respond that the proposed paragraph deals with the article only as it was used against the Plaintiffs and omits language concerning going "into" a private house and language concerning exposure of the person to someone under the age of sixteen or rudely displaying a pistol or deadly weapon, because no arrests were made concerning such conduct.

The Defendants' objection will be overruled since these issues were not in the case.

Defendants' Objection No. 6. In Objection No. 6 the Defendants would consolidate into one paragraph, paragraphs 9 through 14 of Plaintiffs' proposed final decree. The Plaintiffs disagree.

The objection will be overruled. Specificity is more important here than brevity.

Defendants' Objection No. 7. In Objection No. 7 the Defendants request an alteration of the Court's opinion before the entry of judgment in light of Defendants' objections 2, 3 and 5 to paragraphs 9, 10 and 12 of Plaintiffs' proposed decree.

The Court's ruling on objections 2, 3 and 5 dispose

of this objection and it will be overruled.

Defendants' Objection No. 8. This objection goes to language in paragraph 12 which the Defendants believe to be an unnecessary repetition of evidentiary facts. The Defendants object to the second sentence of paragraph 12 and the first half of the third sentence. The Plaintiffs respond that the language is appropriate and lends clarity to the decree.

Defendants' objection will be overruled.

Defendants' Objection No. 9. The Defendants object to the wording of paragraph 15 of the Plaintiffs' proposed final decree, based upon Defendants' objections 2, 3 and 5.

The Court's rulings on objections 2, 3 and 5 dispose of this objection and, this objection will be overruled.

Defendants' Objection No. 10. The Defendants are of the opinion that paragraph 16A unnecessarily restricts law enforcement officers in the performance of their duties. The Plaintiffs are willing to add the words "without adequate cause" at the end of paragraph 16A, but do not wish to add the words, "conducted in a peaceful, lawful, and proper manner," proposed by the Defendants because this would create a selective enforcement loophole.

The Plaintiffs' proposed addition will be accepted and the Defendants' objection overruled.

Defendants' Objection No. 11. The Defendants object to paragraph 16B in that it unreasonably restricts law enforcement officers and Defendants propose to add the words, "conducted in a peaceful, lawful, and proper manner," the Plaintiffs make the same response made to Objection No. 10.

Defendants' objection will be overruled.

Defendants' Objection No. 12. Defendants object to the use of the second "or" in paragraph 16C, as this creates an ambiguity. The Plaintiffs have submitted a molification which eliminates the ambiguity.

Plaintiffs' modification will be accepted and the objection overruled.

Defendants' Objection No. 13. Defendants object to paragraph 16D as repetitious of paragraph 15. The Plaintiffs believe that this is necessary because of the repeated arrests and dispersal of persons in creating actual obstructions.

Defendant's objection will be sustained.

Defendants' Objection No. 14. Defendants object to paragraph 16E as uncalled for since the activity which this paragraph would enjoin is already unlawful. The Plaintiffs believe that this is necessary since the record shows several beatings.

Defendants' objection will be sustained.

Defendants' Objection No. 15. Defendants object to paragraph 16F as repetitious of the injunctive language in paragraph 16B. The Plaintiffs believe that this language is necessary to prevent the practice of using the arrest of one person to justify the arrest of bystanders.

Defendants' objection will be overruled. Paragraph 16F will be renumbered 16D in the Final Judgment.

Therefore, it is ORDERED that Defendants' Objections 1, 3, 5, 6, 7, 8, 9, 10, 11, 12 and 15 are OVER- RULED; and that Defendants' Objections 2, 4, 13 and 14 are SUSTAINED.

The Defendant Rochester by a letter that was received by the Court on November 22, 1972, objects to that part of the Memorandum and Proposed Judgment that finds that Rochester acted in concert with the other defendants.

The objection is without merit and is overruled.

A Final Judgment will enter accordingly. Clerk will enter this Memorandum and Order and provide counsel with true copies.

Done at Brownsville, Texas, this 4th day of December, 1972.

JOHN R. BROWN
John R. Brown, Chief Judge
United States Court of Appeals

REYNALDO G. GARZA
United States District Judge

WOODROW SEALS
United States District Judge

TRUE COPY I CERTIFY
ATTEST:
V. BAILEY THOMAS, Clerk

By Sofia Anderson
Deputy Clerk

APPENDIX "C"

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

**FRANCISCO MEDRANO,
KATHY BAKER, DAVID LOPEZ,
GILBERT PADILLA, MAGDALENO
DIMAS, BENJAMIN RODRIGUEZ,
and UNITED FARM WORKERS
ORGANIZING COMMITTEE,
AFL-CIO,**

Plaintiffs

**CIVIL ACTION
No. 67-B-36**

vs.

**A. Y. ALLEE, JACK VAN CLEVE,
JEROME PREISS, T. H. DAWSON,
DR. RENE SOLIS, RAUL PENA,
ROBERTO PENA, JIM ROCHESTER,
B. S. LOPEZ, and S. H. DENSON,**

Defendants

**DIXIE, WOLF & HALL, CHRIS DIXIE, ROBERT E. HALL,
and GEORGE C. DIXIE of Houston, Texas**
Attorneys for the Plaintiffs

**CRAWFORD MARTIN, Attorney General of Texas,
HAWTHORNE PHILLIPS, ALLO B. CROW and
GILBERT PENA, Assistant Attorneys General of Texas,
and ATLAS, SCHWARZ, GURWITZ & BLAND,
GARY GURWITZ of McAllen, Texas,
LUTHER E. JONES, Corpus Christi, Texas
FRANK R. NYE, JR., Rio Grande City, Texas**
Attorneys for the Defendants

**Before BROWN, Chief Judge
United States Court of Appeals
GARZA, District Judge, and
SEALS, District Judge**

FINAL JUDGMENT

FINAL JUDGMENT

1. This Final Judgment is rendered for and on behalf of Plaintiffs, United Farm Workers Organizing Committee, AFL-CIO, and also Francisco Medrano, Kathy Baker, David Lopez, Gilbert Padilla, Magdaleno Dimas, and Benjamin Rodriguez, individually and as representatives of the class described in Paragraph 2 of this Final Judgment.

2. This Final Judgment is also rendered for and in behalf of the class of persons represented by Plaintiffs, to-wit, the members of Plaintiff United Farm Workers Organizing Committee, AFL-CIO, and all other persons who because of their sympathy for or voluntary support of the aims of said Plaintiff union have engaged in, are engaging in, or may hereafter engage in peaceful picketing, peaceful assembly, or other organizational activities of or in support of said Plaintiff union or who may engage in concert of action with one or more of Plaintiffs for the solicitation of agricultural workers or others to join or make common cause with them in matters pertaining to the work and labor of agricultural workers. The Court hereby finds that the Plaintiffs named in Paragraph 1 of the Final Judgment are appropriate representatives of the class of persons herein described and this is a proper class action.

3. The Plaintiffs named and the persons described in Paragraph 1 and 2 of this Final Judgment are hereafter referred to herein by the term "Plaintiffs and the persons they represent."

4. This Final Judgment is rendered against and is directed to the named Defendants A. Y. Allee, as Captain, and S. H. Denson, Jack Van Cleve, Jerome Preiss, and T. H. Dawson, as Privates, of the Texas Ranger

Force which exists as a division of the Department of Public Safety as provided by Article 4413(11) of Vernon's Annotated Civil Statutes of Texas. This Final Judgment is also directed to the successors in office of the said named peace officers, to the agents and employees of such officers, and to all persons or peace officers acting in concert with them to whom knowledge of this Final Judgment shall come.

5. This Final Judgment is also rendered against and directed to Defendants Dr. Rene Solis as Sheriff of Starr County, Texas, Raul Pena and Roberto Pena as Deputy Sheriffs of Starr County, Texas, to their successors in office, to their agents and employees, and to all persons and peace officers acting in concert with them to whom knowledge of this judgment shall come.

6. This Final Judgment is also rendered against Defendant Jim Rochester as a specially commissioned peace officer and against Defendant B. S. Lopez as Justice of the Peace.

7. The Defendants named and the persons described in Paragraphs 4, 5 and 6 of this Final Judgment are hereafter referred to herein by the term "Defendants, their successors, agents and employees, and persons acting in concert."

8. On the basis of evidence credited by the Court and Findings of Fact in the Court's Opinion of June 26, 1972, the Court finds that Defendants, acting in concert, have engaged in a continuing course of conduct intended to deprive Plaintiffs of their constitutional rights, and have utilized certain specific statutes of the State of Texas as their authority repeatedly to arrest, jail, file charges, threaten to arrest, and disperse Plaintiffs and their sympathizers while the latter were engaged in constitutionally protected activities.

Accordingly, the Court hereby renders Declaratory Judgment under 28 U.S.C. Section 2201 as to the following specifically challenged statutes.

9. The Court declares and adjudges that Section 1 of Article 5154d of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, is null and void. The said portion of the statute reads as follows:

"Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

"'Mass picketing,' as that term is used herein, shall mean any form of picketing in which:

"1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.

"2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions."

10. The Court declares and adjudges that Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, are null and void. The said portions of the statute read as follows:

"Section 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

"Section 2.

* * *

"b. 'Secondary strike' shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

* * *

"d. The term 'secondary picketing' shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

"e. The term 'secondary bocott' shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damage to any person, firm or corporation for whom they are not employees, by

"(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

"(2) Picketing such person, firm or corporation; or

* * *

"(4) Instigating or fomenting a strike against such person, firm or corporation; or

"(5) Interfering with or attempting to prevent the free flow of commerce; or

"(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute."

* * *

"h. The term 'labor dispute' is limited to and

means an controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, the controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee members only of such union, a labor dispute within the meaning of this Act."

11. The Court declares and adjudges that Article 784 of the Texas Penal Code is constitutional.

12. The Court declares and adjudges that Article 474 of the Texas Penal Code was null and void to the extent that it prohibited loud and vociferous language, and to the extent that it prohibited conduct in a manner calculated to disturb the person or persons present at the scene of the conduct. The void portion was the purported authority repeatedly used by Defendants unconstitutionally to arrest or threaten to arrest Plaintiffs and their sympathizers or to order or suggest that they disperse. The portion of said statute which is here declared to be null and void and to have caused the unconstitutional denial of the rights of Plaintiffs and their sympathizers is as follows:

"Whoever shall go into or near any public place, or . . . near any private house, and shall use loud and vociferous, or obscene, vulgar or indecent language or swear or curse, or yell or shriek . . . in a manner calculated to disturb the person or persons present at such place or house, shall be punished by a fine not exceeding Two Hundred Dollars (\$200)."

Article 474 of the Texas Penal Code was amended during the pendency of this suit by Acts 1969, 61st Leg., p. 1510, ch. 454, Section 1, effective June 10, 1969.

The said amendment of Article 474 of the Texas Penal Code did not exist at the times of the events in this case, and the judgment of this Court does not adjudge the constitutionality of said amendment.

13. The Court declares and adjudges that Article 482 of the Texas Penal Code is null and void. The said statute reads as follows:

"Any person who shall in the presence of hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars."

14. The Court declares and adjudges that Article 439 of the Texas Penal Code is null and void. The said statute reads as follows:

"An 'unlawful assembly' is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof."

15. It is further ordered, adjudged and decreed by the Court that Defendants, their successors, agents and employees, and persons acting in concert, are permanently enjoined and restrained from enforcing that part of Article 5154d of Vernon's Civil Statutes of the State of Texas which is quoted in paragraph 9 of this Final Judgment, and that part of Article 5154f of Vernon's Civil Statutes of the State of Texas which is quoted in paragraph 10 of this Final Judgment, and that portion of Article 474 of the Texas Penal Code which is quoted in paragraph 12 of this Final Judgment, and Article 482 of the Texas Penal Code, and Article 439 of the Texas Penal Code, against Plaintiffs

and the persons they represent or any of them, by arresting, imprisoning, filing criminal charges, threatening to arrest, or ordering or advising or suggesting that they disperse under authority of any portion of such statutes as designated herein.

16. It is further ordered, adjudged and decreed by the Court that Defendants, their successors, agents and employees, and persons acting in concert with them, are permanently enjoined and restrained from any of the following acts or conduct directed toward or applied to Plaintiffs and the persons they represent, to-wit:

A. Using in any manner Defendants' authority as peace officers for the purpose of preventing or discouraging peaceful organizational activities without adequate cause.

B. Interfering by stopping, dispersing, arresting, or imprisoning any person, or by any other means, with picketing, assembling, solicitation, or organizational effort without adequate cause.

C. Arresting any person without warrant or without probable cause which probable cause is accompanied by intention to present appropriate written complaint to a court of competent jurisdiction.

D. Stopping, dispersing, arresting or imprisoning any person without adequate cause because of the arrest of some other person.

E. As used in this Paragraph 16, Subparagraphs A, B and D above, the term "adequate cause" shall mean (1) actual obstruction of a public or private passway, road, street, or entrance which actually causes unreasonable interference

with ingress, egress, or flow of traffic; or (2) force or violence, or the threat of force or violence, actually committed by any person by his own conduct or by actually aiding, abetting, or participating in such conduct by another person; or (3) probable cause which may cause a Defendant to believe in good faith that one or more particular persons did violate a criminal law of the State of Texas other than those specific laws herein declared unconstitutional, or a municipal ordinance.

Clerk will enter this Final Judgment and provide counsel with true copies.

Done at Brownsville, Texas, this 4th day of December, 1972.

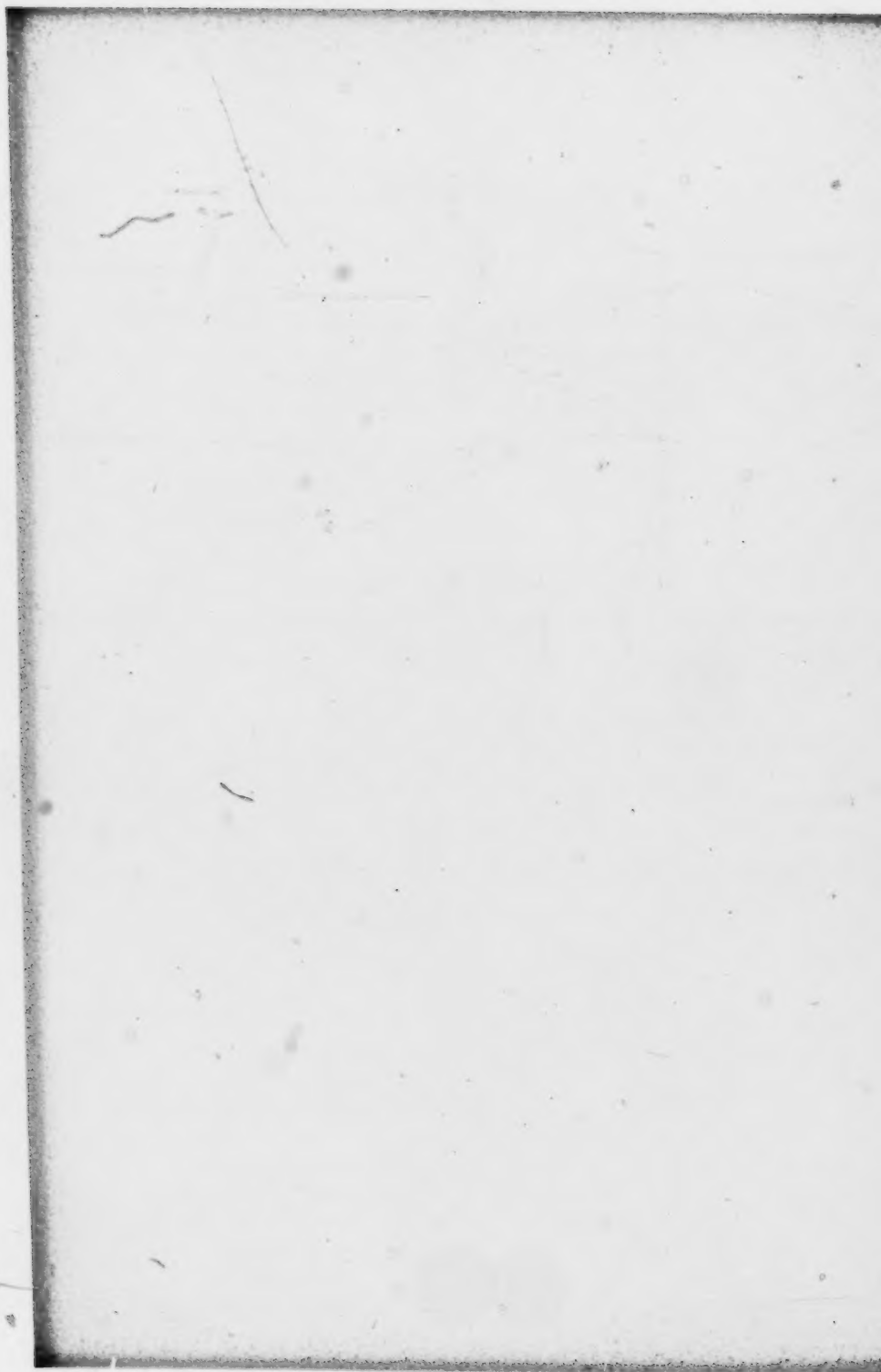
JOHN R. BROWN
John R. Brown, Chief Judge
United States Court of Appeals

REYNALDO G. GARZA
United States District Judge

WOODROW SEALS
United States District Judge

TRUE COPY I CERTIFY
ATTEST:
V. BAILEY THOMAS, Clerk

By Sofia Anderson
Deputy Clerk



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MAR 5 1973

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1125

A. Y. ALLEE, ET AL.,
Appellants,

vs.

FRANCISCO MEDRANO, ET AL.,
Appellees.

**ON DIRECT APPEAL FROM THE UNITED STATES
THREE-JUDGE DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS**

JURISDICTIONAL STATEMENT

**BRIEF AMICUS CURIAE ON BEHALF OF FARAH
MANUFACTURING COMPANY, INC.,
URGING REVERSAL**

WILLIAM DUNCAN
ROYAL FURGESON
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March 1, 1973

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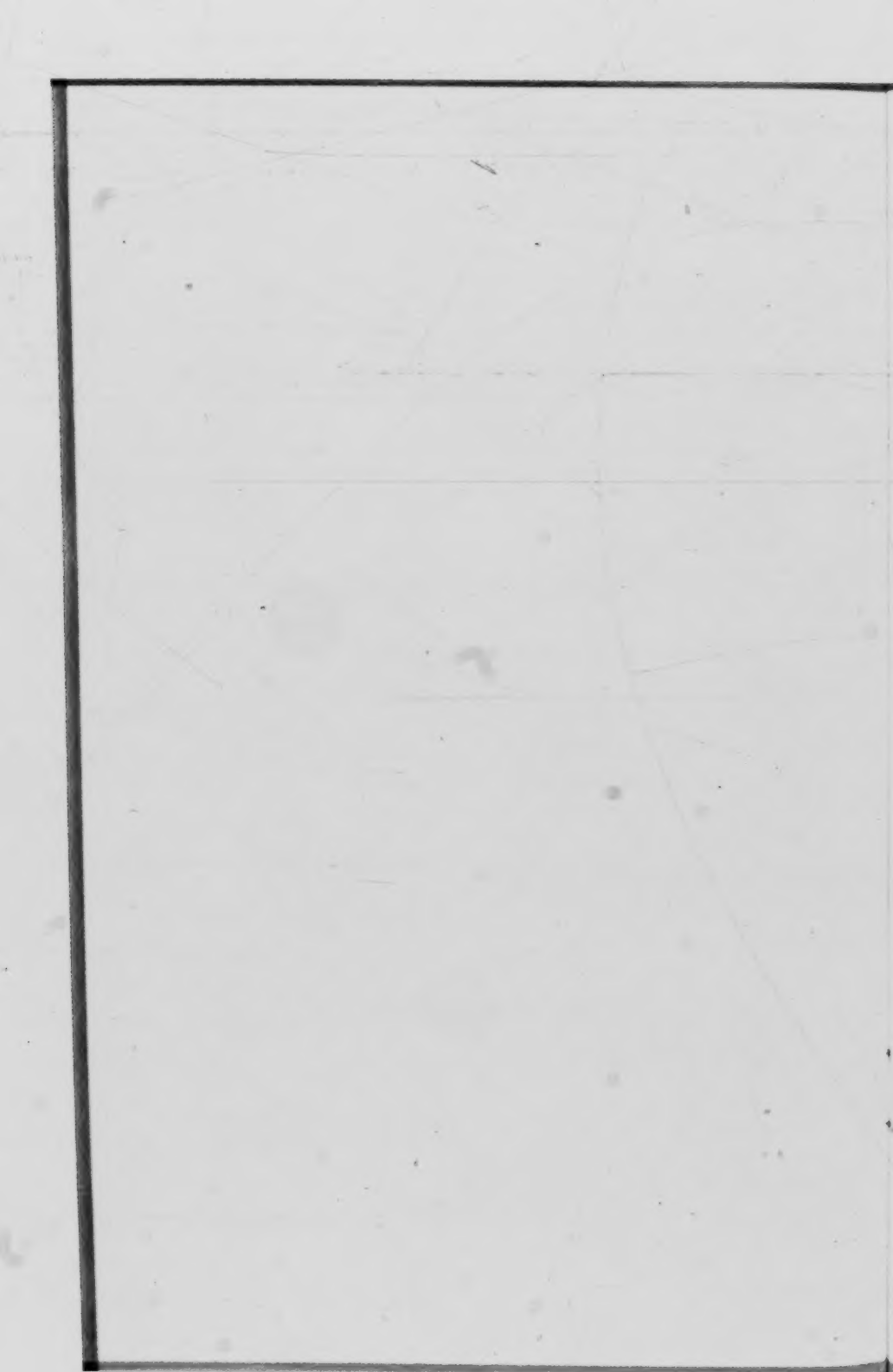
Citations

CASES

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1125

A. Y. ALLEE, ET AL.,
Appellants,

vs.

FRANCISCO MEDRANO, ET AL.,
Appellees.

ON DIRECT APPEAL FROM THE UNITED STATES
THREE-JUDGE DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

BRIEF AMICUS CURIAE ON BEHALF OF FARAH MANUFACTURING COMPANY, INC., URGING REVERSAL

Farah Manufacturing Company, Inc. (Farah) respectfully submits its brief *amicus curiae*, having obtained consent to do so from all parties. Appendix A.

QUESTION PRESENTED

Farah limits this brief to the single question of whether the Texas mass picketing statute's number-and-distance requirement,¹ limiting pickets to two within 50 feet of an entrance or of other pickets, places an unconstitutional restraint on protected First Amendment freedoms.

1. Article 5154d, Section 1, Texas Revised Civil Statutes.

INTEREST OF AMICUS CURIAE

Farah is interested in *Medrano*, the instant case, because it has pending before this court a petition for a writ of certiorari in a case where the constitutionality of the number-and-distance requirement of the Texas mass picketing statute is also in issue. *Farah Manufacturing Company, Inc., et al. v. El Paso Joint Board, Amalgamated Clothing Workers of America, et al.*, No. 72-619. Indeed, the *Farah Manufacturing* case is linked very closely to *Medrano*, which was decided below while *Farah Manufacturing* was pending consideration on appeal before the Fifth Circuit. After the *Medrano* decision was rendered, Farah moved the Fifth Circuit to hold in abeyance its decision pending *Medrano's* appeal to this Court, which appeal Farah was assured would be forthcoming. Appendix B. However, the Fifth Circuit denied the motion, cited this case with approval, and ruled against Farah. Subsequently, Farah perfected its petition for writ of certiorari.

As in the instant case, the issue of the constitutionality of the mass picketing statute is clearly presented by *Farah Manufacturing*, where hundreds of pickets massed at entrances to Farah plants, in open violation of the statute's number-and-distance requirement. Further, since the labor dispute which resulted in the *Farah Manufacturing* litigation still exists, the importance to all litigating parties of a final decision on the constitutionality of the Texas mass picketing statute cannot be underestimated.

ARGUMENT

In *Medrano*, the court below found the Texas mass picketing statute, Article 5154d, Texas Revised Civil Statutes, defective for the same reasons advanced in *Davis v. Francois*, 395 F.2d 730 (5th Cir. 1968). In *Davis*, the Fifth Circuit examined a city ordinance limiting the right to picket in the following terms:

It shall be unlawful for more than two (2) people to picket on private property or on the streets and sidewalks of the City of Port Allen in front of a residence, a place of business, or public building. Said two (2) pickets must stay five (5) feet apart at all times and not obstruct the entrance of any residence, place of business, or public building by individuals or by automobiles.

395 F.2d at 732. The Fifth Circuit recognized that First Amendment protection extended, not only to pure speech, but also to peaceful expressions of views by marches, demonstrations or assemblies. 395 F.2d at 733. It also recognized that certain governmental interests could be invoked to regulate such expressions to prevent riots, disorder, interference with traffic, blockage of sidewalks or entrances to buildings, and disruption of normal functions of public facilities. 395 F.2d at 733. Cf. *Allen-Bradley Local 1111, United Elec. Workers v. Wisconsin Employment Relations Bd.*, 315 U.S. 740 (1942).

After examining these competing considerations, the Fifth Circuit found the city ordinance void for overbreadth and made the following observation:

Its application is sweeping: It restricts "public issue picketing" and private picketing; it restricts picketing on both the sidewalks and the streets; it extends

to all kinds of facilities in the city though each may present different considerations; it absolutely limits the number of picketers to two regardless of the time, place or circumstances. In doing so it "unduly restricts the right to protest" because it does not aim specifically at a serious encroachment on a state interest or evince any attempt to balance the individual's right to effective communication and the state's interest in peace and harmony.

395 F.2d at 735. The court was especially concerned with the absolute restriction on the number of pickets, which was thought to be especially restrictive when coupled with the fact that the ordinance covers all kinds of buildings. 395 F.2d at 735.

A factual comparison of the Texas mass picketing statute with the ordinance in the *Davis* case indicates that the Texas statute has been drafted in proper observance of constitutional mandates. Unlike the ordinance, the statute does not absolutely limit the number of pickets to two regardless of the time, place or circumstance.² Instead, it merely provides that pickets must be spaced at a reasonable distance from entrances and from one another so as to permit the state to protect its legitimate interests, such as the prevention of disorder, interference with traffic, blockage of sidewalks or entrances to buildings, and disruption of normal public functions.³ In addition to

2. For example, the undisputed record in *Farah Manufacturing* reveals that, properly spaced, more than 100 individuals could picket one of Farah's plants without contravening the statute.

3. In *Amalgamated Food Employees Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308, 322 (1968), this court disapproved of state action which removed picketing to 350 feet from the situs, because the distance was so great as to render communication by placards "virtually indecipherable." In contrast, the Texas statute permits two pickets directly at an entrance, thus encouraging effective communication by any means, placards, voice, or handbills.

the fact that the statute is not unduly restrictive, it is likewise not susceptible of discriminatory enforcement.⁴ Rather, it properly provides both those seeking to publicize their labor dispute and the officials charged with the duty to regulate the place and manner of use of the streets and sidewalks with a clear and reasonable standard which, unlike the ordinance in *Davis*, properly balances their respective legitimate interests. *Cox v. Louisiana*, 379 U.S. 536 (1965); *Cox v. New Hampshire*, 312 U.S. 569 (1941).

Moreover, as an exercise of police power, the Texas statute is within the constitutional authority of the state; as an attempt to prevent interference with traffic and blockage of sidewalks or entrances, it furthers an important state interest; as a regulation of conduct, it is unrelated to the suppression of free expression; and, as an effort to further legitimate goals, it is an incidental restriction on alleged First Amendment freedoms, which restriction is no greater than is essential to the furtherance of such an interest. *United States v. O'Brien*, 391 U.S. 367 (1968).

In the instant case, the court below disregarded these clear manifestations of validity and observed that little "imagination is required to envisage circumstances where groups of demonstrators, substantially larger than two persons, standing at closer quarters than fifty feet would not threaten the safe flow of traffic nor unreasonably interfere with free ingress or egress from nearby buildings." *Medrano v. Allee*, 347 F.Supp. 605, 625 (S.D. Tex.

4. Picketing which complies with the readily-ascertainable standard established by the Texas Legislature is thus protected from interference from law enforcement officials who, in the absence of an established definition as to what constitutes "mass picketing," might well impose a more restrictive standard upon attempted picketing.

1972). However, whether there are circumstances under which more than two persons might not threaten traffic nor interfere with ingress and egress is a question appropriately left to legislative discretion. The proper issue, to which the court below failed to address itself, is whether the regulation adopted by Texas unduly and unnecessarily restricts the ability of a union to communicate its views to the public. *Schneider v. State*, 308 U.S. 147, 161 (1939). Consequently, since a thorough analysis of the competing interests balanced by the Texas Legislature in the mass picketing statute was not attempted by the court below, its decision was incorrect.

CONCLUSION

The court below has departed from standard principles in declaring unconstitutional the number-and-distance requirement of the Texas mass picketing statute. Consequently, this Court should give the case full review.

Respectfully submitted,

WILLIAM DUNCAN

ROYAL FURGESON

2000 State National Plaza

El Paso, Texas 79901

KENNETH R. CARR

P. O. Box 9519

El Paso, Texas 79985

TOMMY B. DUKE

P. O. Box 82028

Lincoln, Nebraska 68501

March 1, 1973

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March, 1973, three copies of the Brief *Amicus Curiae* were mailed, postage prepaid, to the following:

CHRIS DIXIE
609 Fannin Street Building
Suite 401
Fannin Street at Texas Avenue
Houston, Texas 77002

THE HONORABLE JOHN L. HILL
Attorney General of Texas
Austin, Texas 78711
(Attention: Gilbert J. Pena)

FRANK R. NYE, JR.
Rio Grande City, Texas 78582

LUTHER E. JONES, JR.
338 Laurel Drive
Corpus Christi, Texas 78404

GARY GURWITZ
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El Paso, Texas 79901

APPENDIX

APPENDIX A

**ATLAS, HALL, SCHWARZ, MILLS, GURWITZ
& BLAND**

Attorneys At Law

**Professional Arts Building 818-820 Pecan
P.O. Drawer 1870 (512) 682-5501
McAllen, Texas 78501**

December 26, 1972

Mr. Royal Furgeson
Kemp, Smith, White,
Duncan & Hammond
2000 State National Plaza
El Paso, Texas 79901

Re: Civil Action No. 67-B-36
Medrano, et al v A. Y. Allee, et al

Dear Mr. Furgeson:

On behalf of the Defendant Jim Rochester, whom we represent in the above cause, we consent to your filing an amicus curiae brief in this case. Please let me know if you need anything additional in order to confirm or document this consent.

Very truly yours,

Atlas, Hall, Schwarz, Mills,
Gurwitz & Bland

By /s/ Gary Gurwitz

GG/ag

A2

LUTHER E. JONES, JR.

Lawyer

338 Laurel Drive

Corpus Christi, Texas 78404

Phone: 882-5388

January 12, 1973

Mr. Royal Furgeson
2000 State National Plaza
El Paso, Texas, 79901

Dear Sir:

This is to advise, in reply to your letters of Dec. 21, 1972 and January 5, 1973, that I personally have no objection to your filing the brief you mention. As you know, I was one of the lawyers for the county officials involved. I have not been in touch with them for months. I assume, but do not know, that they have no objection to your filing the brief. You have my permission to contact them directly if you wish, or, better still, it might be a good idea for you to contact Randall Nye in Rio Grande City. He also is of counsel for them and could tell you quickly what their wishes are.

Sincerely,

/s/ Luther E. Jones, Jr.

A3

FRANK R. NYE, JR.
Attorney and Counselor
Rio Grande City, Texas 78582

February 20, 1973

Mr. Royal Ferguson
Kemp, Smith, White, Duncan & Hammond
200 State National Plaza
El Paso, Texas 79901

Re: Cause No. 67-B-36
Medrano vs Allee, et al.

Dear Mr. Ferguson:

As one of the attorneys for Defendants, Dr. R.A. Solis, Paul Pena, Roberto Pena, and B.S. Lopez, we have no objection to your filing our amici curiae brief on behalf of Farah Manufacturing Company, in the above styled and numbered case before the U.S. Supreme Court.

Yours very truly,

/s/ Frank R. Nye, Jr.

FRNJ/bi

A4

THE ATTORNEY GENERAL OF TEXAS
Austin, Texas 78711

January 8, 1973

Honorable Royal Furgeson
Kemp, Smith, White, Duncan & Hammond
2000 State National Plaza
El Paso, Texas 79901

Re: Civil Action No. 67-B-36
Medrano v. Allee, U.S.D.A.,
S.D. Texas, Brownsville Div.

Dear Mr. Furgeson:

This is to confirm my telephone conversation of December 28, 1972, with your office where I advised your office that I was authorized to state to you that this office has granted consent to Farah Manufacturing Company, Inc. to file a brief, as amicus curiae, in the *Medrano* decision.

As soon as a copy of the jurisdictional statement is printed I will send you a copy.

Yours very truly,

/s/ Gilbert J. Pena
Assistant Attorney General

GJP:pa

A5

DIXIE, WOLF & HALL
Attorneys and Counselors
609 Fannin St. Bldg.—Suite 401
Fannin St. at Texas Avenue
Houston, Texas 77002

February 19, 1973

Mr. Royal Furgeson
Kemp, Smith, White, Duncan & Hammond
2000 State National Plaza
El Paso, Texas 79901

Dear Mr. Furgeson:

On behalf of my clients in the case of *Medrano v. Allee*, 347 F. Supp. 605 (S.D. Tex. 1972), I consent to your filing an amicus curiae brief in said cause now before the United States Supreme Court for Farah Manufacturing Company, Inc. My consent is given in light of your representation that such a brief will be limited to a discussion of the constitutionality of Section 1, Paragraph 1 of Article 5154d, Texas Revised Civil Statutes, which relates to the spacing of pickets at certain distances.

Very truly yours,

/s/ Chris Dixie

CD/ma

APPENDIX B

THE ATTORNEY GENERAL OF TEXAS

Austin, Texas 78711

July 31, 1972

AIR MAIL SPECIAL DELIVERY

Hon. Royal Furgeson
Kemp, Smith, White, Duncan
and Hammond
2000 State National Plaza
El Paso, Texas 79901

Re: C.A. 67-B-36—Francisco
Medrano, et al v. A. Y. Allee,
et al—USDC, SD Tex.,
Brownsville Division

Dear Mr. Furgeson:

In response to your telephone inquiry regarding the attitude of this office with reference to appealing the above captioned cause, I am authorized to state to you categorically that this office is now in the process of taking affirmative action to appeal this case immediately. As soon as final judgment is entered, we will make application for a Stay Order and immediately perfect our appeal.

Yours very truly,

/s/ Nola White
First Assistant

NW:bm

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SUPREME COURT, U. S.

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APR 17 1972

MICHAEL ROSEN, JR., CL

No. 72-1125

IN THE
Supreme Court of the United States
October Term, 1972

A. Y. ALLEE, ET AL, *Appellants*

v.

FRANCISCO MEDRANO, ET AL, *Appellees*

**On Direct Appeal From The United States
District Court, Southern District of Texas,
Brownsville Division**

MOTION TO AFFIRM

**CHRIS DIXIE
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Houston, Texas 77002
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Attorney for Appellees

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No. 72-1125

IN THE
Supreme Court of the United States
October Term, 1972

A. Y. ALLEE, ET AL, *Appellants*

v.

FRANCISCO MEDRANO, ET AL, *Appellees*

**On Direct Appeal From The United States
District Court, Southern District of Texas,
Brownsville Division**

MOTION TO AFFIRM

Appellees Francisco Medrano, et al., move that the judgment of the district court be affirmed or alternatively that this appeal be dismissed on the ground that the questions are so insubstantial as not to require further argument.¹

1. We refer often to the Appendix to the Jurisdictional Statement which begins at page 33 of the Jurisdictional Statement.

There is also a short Appendix to this Motion which is referred to as Appendix, *infra*, p. 37.

PRELIMINARY STATEMENT

The Attorney General's Jurisdictional Statement ignores the fact findings and presents a version of the case so alien to the record that we fear the Supreme Court will be misled.

In short, the district court found that five Texas Rangers, and the Sheriff of Starr County, Texas, with two of his deputies (plus two other persons) subjected the Appellee farm workers and their union to a full year of official lawlessness (including violence) in overt partisanship with the private employers who opposed this lawful organizing effort. Said the court: "The union's efforts collapsed under this pressure in June of 1967 and this suit was filed in an effort to seek relief." (App. 51-52) The challenged statutes were skillfully used by these officers to further the conspiracy.

QUESTIONS PRESENTED

1. Whether the district court's findings, which are not challenged as "clearly erroneous" by appellants, that defendants had engaged in bad-faith prosecution and harassment of plaintiffs to discourage the exercise of their constitutional rights were sufficient under *Younger v. Harris*, 401 U.S. 37, to justify the limited injunction entered against the defendants?

2. Whether the Texas statutes which the district court found to be the basis of the bad-faith prosecutions brought by defendants are unconstitutional?

STATEMENT OF THE CASE

1. The Judgment Below

The judgment below does not enjoin pending state prosecutions. Nor does it enjoin future application of these statutes at the hands of state authorities other than the specific group of peace officers who deliberately misused the challenged statutes to effectuate their conspiracy with private parties.

Narrowly drawn in one paragraph (App. 100-101), the injunction order is specifically "directed to" the five named Texas Rangers (one Captain and four Privates), the Sheriff of Starr County, Texas, and his two named deputies, and their agents, employees, successors in office, and persons in active concert with them (App. 95-96) and the two other named persons. This group is ordered not to enforce the challenged statutes against Plaintiffs and their supporters by ". . . arresting, imprisoning, filing criminal charges, threatening to arrest, or ordering or advising or suggesting that they disperse under authority of . . . such statutes. (App. 100-101)

Thus, carefully matched to the specific evils encountered, the injunction leaves the Attorney General of Texas, prosecutorial officials and private parties free to litigate under the statutes either in the pending prosecutions or in new cases. Authoritative state court constructions to save the statutes' constitutionality by defining their proper application can be obtained anytime state officials desire. Of course, other peace officers all over Texas are not covered by the injunction and may utilize the statutes as they see fit.

The main thrust of the final judgment is to render declaratory judgment as prayed for under the Declaratory Judgment Act, 28 U.S.C.A. 2201 and 2202, and to render injunctive relief as prayed for under the Civil Rights Acts, 42 U.S.C.A., §1983 and §1985 on account of the adjudicated conspiracy of the defendants to deprive plaintiffs of their civil rights, privileges and immunities protected by the Constitution of the United States by acts under color of state law.

Only the five Texas Rangers have appealed to this Court. The judgment has become final as to the other defendants.

Also, there is no challenge on this appeal to the injunctive relief against the official lawlessness found to exist and adjudicated to be in violation of the Civil Rights Acts. (App. 72; 101-102). The conspiracy facts under these acts and the harassment facts under *Younger v. Harris* requirements turn out to be the same in this case.

The Supreme Court is respectfully advised that the preservation of this unchallenged part of the judgment below is of highest importance to these Appellees who have been terrorized enough by the law officers.

2. Legal and Economic Background

The federal statute does not cover farm workers because the definition of "employee" in 29 U.S.C.A., §152, contains the proviso that the term "shall not include any individual employed as an agricultural laborer. . . ." Article 5153 of Vernon's Annotated Texas Statutes provides that it shall be lawful for any member of a union

or other organization to induce or attempt to induce by peaceful and lawful means any person to accept any particular employment, or enter or refuse to enter any pursuit, or to quit or relinquish any particular employment (Appendix, *infra*, p. 37). Article 5207a, §1, guarantees the right of every person to bargain individually or collectively with his employer (Appendix, *infra*, p. 37). Article 5154b prohibits picketing or striking in breach of a labor contract. (Appendix, *infra*, p. 37). Under these Texas statutes the right to organize an association of farm workers, the right to appeal to employees to quit any particular employment or to refuse to enter upon it, and the right to seek collective or individual bargaining are entirely consistent with state policy.

However, an employer is under no statutory duty to recognize a union selected by his employees and has no duty to bargain for a labor contract. *Flenoy v. Yarbrough*, 318 S.W.2d 15, writ ref., n.r.e. An employer may recognize a union as a representative of one, several, or all of his employees if he desires to do so, or he may fight economically and may defeat union organization by replacing strikers, or by other lawful means. In short, Texas law looks to the survival of the fittest economically. In this case it was stipulated that the ultimate objective of the farm workers was in keeping with the public policy of the State. Indeed, their efforts to solicit support were exactly the last resort that Texas statutes contemplate in view of employer resistance to union organization.

Starr County, Texas, one of the poorest in the nation economically, is located deep in the Rio Grande Valley. This labor dispute involved several large growers which

are shown by the record to cultivate thousands of acres with hundreds of farm workers employed during harvest seasons of the year. Largely these farm workers are of Latin-American extraction of both U.S. and Mexican residence and citizenship. A substantial part of the labor force is transported to the farms in bus loads.

3. The Harassment Facts

Regardless of the broad experience of the Justices of this Court, we think Your Honors have not seen a case like this.

The district court found that the farm workers in Starr County attempted for one full year, June 1, 1966 to June 1, 1967, to exercise their rights of citizenship, but during the entire year they were systematically set upon, threatened, dispersed, arrested, jailed, detained, man-handled and even beaten. Throughout, the law officers intertwined their enforcement of these unconstitutional statutes. The district court's findings of fact are set out at App. pp. 34-55.

Substantially as found by the district court, the farm workers' travail was this:

Union organization started June 1, 1966. Within one week, on June 8, 1966, Eugene Nelson was stopped from soliciting the support of agricultural workers at the Roma International Bridge, arrested without warrant or charge, jailed for several hours in the county jail of Starr County, counseled in a menacing way by the County Attorney, then released without charge. (App. 38-39)

As organization developed in the summer of 1966, the Sheriff's office commenced the distribution of a viciously anti-union weekly newspaper, *La Verdad*. Weekly, Deputy Sheriffs went to the bus station in official cars to pick up these newspapers, took them to the Sheriff's office and prepared them for distribution to the public, including house-to-house distribution by deputy sheriffs. The district court attached copies of *La Verdad* to its opinion. The headlines said: "ONLY MEXICAN SUBVERSIVE GROUP COULD SYMPATHIZE WITH VALLEY FARM WORKERS," "UNION LEADERS IN VALLEY ARE VAGRANTS," and "GOVERNOR CONNALLY SHOULD DO SOMETHING ABOUT VALLEY STRIKE." The Supreme Court will please bear in mind that the deputy sheriff distributors of these weekly newspapers were the law officers who administered the statutes here challenged. (App. 49)

On October 12, 1966, about 25 farm workers appeared on U. S. Highway 83 adjacent to the Rancho Grande Farms to solicit support of the workers in the fields. Deputy Sheriff Raul Pena dispersed these persons by threatening to arrest them for disturbing the peace in violation of Article 474. He testified that these persons were calling to the workers in the fields and disturbing them by the use of "loud and vociferous language." The farm workers did disperse under this threat, but William Chandler was arrested and charged with disturbing the peace when he told Pena that he had no right to order these people to disperse. Pena charged Chandler with the use of "loud and vaciferous language" under Article 474, jailed him, and placed him under \$500 bond although the maximum fine for the offense was

\$200. When two union supporters went to the courthouse to make bond for Chandler, a deputy sheriff cursed them and told them that if they did not leave they, too, would be jailed. (App. 39-40)

On October 24, 1966, Domingo Arrendo, then under arrest, uttered the words "Viva La Huelga" (long live the strike) in the courthouse, whereupon a deputy sheriff slapped him and put a cocked pistol to his head. The deputy ordered him not to utter those words in the courthouse again. (App. 40)

On November 9, 1966, Deputy Sheriff Roberto Pena filed misdemeanor charges of "secondary strike" under Article 5154f against 10 union adherents on account of their picketing at the packing sheds of the farm owners. Texas Rangers were called from afar to serve the warrants of arrest on the 10 persons. Two Texas Rangers, Frank Harger and Jerome Preiss, arrested two union members and put them in a police car. In the car the Rangers told the two farm workers that they could go to work for La Casita Farms for \$1.25 an hour (the union objective), that later they could get a more peaceful union, and that the Rangers were there to break the strike and would not leave until they had done so. (App. 40-41)

We invite the Court's attention to the manipulation of the Texas statute in these November 9 charges. Article 5154f renders either picketing or striking "secondary" (and thus illegal) if not part of a "labor dispute." In turn, a "labor dispute" is limited to a controversy between an employer and a majority of his employees.

Texas courts have long since declared the "secondary picketing" phrase of Article 5154f to be unconstitutional

since simple primary picketing by a minority of employees which violates no public policy of the State is constitutionally privileged. *Ex Parte Henry*, 215 S.W.2d 588; *I.U.O.E. v. Cox*, 219 S.W.2d 787; *General Labor Union v. Stephenson*, 225 S.W.2d 958. Notwithstanding the constitutionally privileged character of this primary picketing at the packing sheds, the November 9th charges presented an ingenious new angle. The pickets, the charges alleged, did "aid and abet" a "secondary strike" when the engineer and fireman of the Missouri Pacific Railroad declined to cross the picket line to enter the packing shed area. After all, the engineer and the fireman were certainly less than a majority of the railroad's employees, and, therefore, the picketers, by picketing, aided and abetted them in a "secondary strike." This was a cute way around the cited *Henry*, *Cox* and *Stephenson* decisions and furnished a pretext for the arrest of union adherents for peaceful and privileged primary picketing. Article 5154f provides a penalty up to six months in jail for its violation. Of course, these charges have never been set for trial in the intervening seven years.

But, the lesson could hardly be misunderstood by the union sympathizers. If they could be prosecuted for "aiding and abetting a secondary strike" in picketing at a primary situs, then picketing would be dangerous wherever done. Six months in jail does give one pause.

On January 26, 1967 five union sympathizers were arrested on the banks of the Rio Grande River while soliciting the employees of Trophy Farms to join the union. The charge this time was Abusive Language in violation of Article 482 in that they did curse or abuse

or used violently abusive language toward the workers under circumstances reasonably calculated to provoke a breach of the peace. That evening approximately 20 union supporters gathered at the courthouse to conduct a prayer vigil. Two members of the group, Reverend James Drake and Gilbert Padilla, mounted the courthouse steps and engaged in prayer. Deputy Sheriff Raul Pena ordered the group to leave the courthouse grounds and they did so, but Drake and Padilla remained on the steps. The deputy thereupon arrested them for Unlawful Assembly in violation of Article 439. (App. 41-42)

No Texas statute prohibits the presence of this group on courthouse grounds. By stipulation it was established that the courthouse grounds had been used in the past for night rallies and dances by custom and practice in the particular county. The court below found this to be one of the several episodes of selective enforcement by the defendants.

On February 1, 1967, two Catholic priests, Father Smith and Father Killion, and three other priests, assembled in a wooded area on private property owned by one Thomas Bazan adjacent to the property of La Casita Farms. The five priests solicited the workers in the fields to join the Union. They were promptly arrested for Disturbing the Peace and taken to a magistrate. (App. 42-43)

There the magistrate, B. S. Lopez, Justice of the Peace, informed the priests that if they were ever brought into the same court under the same charge they would be put under a peace bond, and if they couldn't meet the bond, they would be put in jail. Relative to these arrests the Attorney General of Texas made the following statement

before the three judge court. He said in Defendants' Post Hearing Brief:

"Based on the testimony of the two Catholic priests, Father Smith and Father Killion, everyone present could have been charged with the violation of Article 5154d, mass picketing, with Articles 439 and 449, unlawful assembly, and possibly under Article 482, abusive language, as Father Smith stated that they were calling the workers 'scab' in Spanish in attempting to use the word that has 'punch to it and an edge on it.'" (Appendix, *infra*, p. 38)

As of May 11, 1967, the farm workers had developed important support on the Mexican side. As a result, on that day no Mexican farm workers came across the Rio Grande river to do work for the growers. This development triggered intense activity on the part of Texas Rangers.

On the morning of May 11, 1967, a group of farm workers supporters left Roma Bridge headed south for the Camargo Bridge. On the way their car was stopped by a Texas Ranger although the car was not speeding or violating any other traffic law. The driver of the car was arrested for not having a driver's license. On the same day, Ranger Captain Allee solicited union adherents to go to work for \$1.25 per hour. (App. 43)

On May 12, 1967, Texas Rangers received a complaint from La Casita Farms that the union people were on private property owned by one Solis adjacent to the property of La Casita. The Texas Rangers promptly went to the scene of the solicitation. First they made investigation whether the union supporters had permission from

Mr. Solis to be on his private property. Then the Texas Rangers caused the pickets to spread out 50 feet apart. Reverend Edward Krueger, a union sympathizer, stepped off the distance to comply with the Rangers' instructions. All this took place in the woods. (App. 43-44)

Later that day, May 12, Eugene Nelson went to the Sheriff's office to complain that the Texas Rangers were acting as a private police force for La Casita Farms. As a result, Nelson was arrested and charged with threatening the life of certain Texas Rangers. Defendant, Captain Allee, testified that he did not take the "threat" seriously, he directed that charges be filed against Nelson in order to protect the Texas Rangers from criticism if something happened to Nelson. After Nelson was jailed on this charge, the Sheriff's deputies unlawfully refused to accept a tendered appearance bond although they knew that the bond was signed by a prominent landowner in Starr County, one Joseph Guerra. The Texas Rangers who arrested Nelson on this charge told him that he had lived a charmed life in Starr County long enough and warned him not to go too near the river or he might end up floating down. (App. 44)

On May 18, 1967, a group of about 22 pickets assembled near the entrance of Trophy Farms on U. S. Highway 83 to solicit support from workers in the field. In response to a call from Trophy Farms, Ranger Captain Allee went to the scene and arrested these persons because he found these pickets within a radius of 50 feet of the entrance of Trophy Farms and also within 50 feet of each other in violation of the mass picketing statute.

On May 26, 1967, 14 union sympathizers were arrested in two groups at Mission, Texas. Some of the union

sympathizers had intended to picket on the main street of Mission, Texas, at its intersection with the Missouri Pacific Railroad tracks. Texas Rangers arrested and charged them with trespassing on private property, but later this charge was changed to Unlawful Assembly. Three days later the charges were changed to secondary picketing and boycott charges filed by agents of the Missouri Pacific Railroad.

The first group of 10 persons was arrested by Texas Rangers because they were preparing to picket at the intersection of the public street with railroad tracks, although no train had arrived. At the same time, union sympathizer Francisco Medrano was arrested for taking pictures for a union publication, and his camera was pushed into his face by a Ranger. The Rangers also confiscated all picket signs.

Later the same evening, Reverend Edward Krueger arrived at the scene and asked the Ranger Captain the reason for the previous arrests. Allee replied "for trespassing on private property." Then, as a train passed across the main street of Mission, the Ranger Captain went to Reverend Krueger and physically grabbed him saying, "I'm sick and tired of seeing you around." Allee seized Krueger by the collar and the seat of the pants and took Krueger to the railroad track where he held Krueger's head within a few inches of the passing freight train. Another Ranger did the same to another union sympathizer. When Mrs. Krueger took a picture of this mistreatment of her husband, a Ranger arrested her, confiscated her camera and exposed the film. Krueger and Dimas were manhandled further and others were arrested, one of them Doug Adair, who was told by a Ranger,

"You look like you want to be arrested." The four persons were then put in a Ranger car for a terrifying ride at a speed of 90 to 100 miles an hour to Edinburg, Texas, where they were jailed. These persons, too, were charged with unlawful assembly, then secondary boycott. (App. 44-45)

On May 31, 1967, the Rangers arrested 13 persons for mass picketing in the woods at the west periphery of La Casita Farms. Ranger Captain Allee testified that he arrested these persons because they were gathered together in a group and thus were picketing in a forbidden manner in his sight and presence. In this connection, three of the pickets had moved southward along a country road to follow the work force as it moved through the field, but the other eight who were bothered by the heat waited with their cars under the shade of some trees with their signs put away. Captain Allee arrested the first three pickets and then directed that the eight others under the tree likewise be arrested for mass picketing. After all, they were bunched up. (App. 46-47)

On the night of June 1, 1967, Ranger Captain Allee with gun in hand conducted in Rio Grande City, Texas a conspicuous and terrifying man hunt for Magdaleno Dimas, a union supporter. The man hunt led to a private residence which Texas Rangers surrounded, then broke into after calling out the Justice of the Peace to issue a curbside search warrant. After breaking in, they administered a merciless beating to Dimas and another.

The man hunt had been conducted without known reason, without charges, and without warrant, but after Dimas was jailed, an official of La Casita Farms, de-

fendant Jim Rochester, was called out in the night to file appropriate charges. Dimas was charged with disturbing the peace at La Casita Farm Shed No. 1 by yelling, "Viva La Huelga." (Long live the strike). (Pl. Exhibit 7. 22D) and by rudely displaying a deadly weapon. (Pl. Exhibit 7. 22C). Other evidence established that during the daylight hours of the same day, Dimas had walked along the highway past La Casita's packing shed with a hunting rifle in hand, returning from a bird hunt. (App. 47-49)

Also on June 1st three more union supporters picketing at the La Casita shed were arrested for mass picketing and secondary boycott. The charge of mass picketing was filed because they were three in number. The secondary boycott resulted from the fact the pickets were near the premises of the Missouri Pacific Railroad (the tracks which enter La Casita's shed), an employer which had no labor dispute with its employees.

So, on June 1, 1967, the Union announced that it would discontinue its organizing efforts and seek relief from the courts. This suit followed promptly.

All the above facts and many others were proved to the district court which was unanimous in making uncommonly strong fact findings. The evidence showed 8 cases of overt official partiality, 5 cases of manhandling by officers, 7 cases of unwarranted prosecution, 3 cases of bonding abuses, and 56 arrests for First Amendment activity, plus numerous dispersals of persons or interference with them where no charges were filed. Physical brutality was administered on at least 5 union leaders.

None of the pending prosecutions has ever been set for trial.

This record satisfies the stringent requirements of *Younger v. Harris*, 401 U.S. 37 (1971), and companion cases and answers Appellants' argument at pages 26-31 of their Brief that these law officers should not be restrained from future use of the statutes because of the pendency of the state cases. The District Court's review of these harassment facts is at Appendix pp. 34-55.

The Attorney General's indifference to the fact findings and to the official lawlessness behind them is fresh evidence that some of our state officials still do not wish to shoulder responsibility for the control of ugly law enforcement. The alleged misconduct attributed to farm workers at pp. 7-9 of the Jurisdictional Statement is made practically from the whole cloth. Indeed, the district court found at App. p. 50 that the strongest evidence of an assault on anyone by the farm workers during the entire year was an attempt by one of them to reach through an open window of a passing truck to grab a nonstriker by the coat on December 28, 1966. Although it was claimed that property destruction and the burning of a railroad bridge resulted from the strike, no evidence was presented specifically in this respect, and the district court so found (App. 37-38).

Without purporting to whitewash the activities of the farm workers and their sympathizers, the district court found that the law officers stepped over the line of neutral law enforcement and entered the controversy on the employers' side (App. 51). The law officers were found to have deliberately intended to break the strike and to

prevent persons from supporting it by using their law enforcement powers to this end by instituting these prosecutions in bad faith and for the purpose of harassment (App. 55).



Exhibit 7.11B shows the place on the bank of the Rio Grande River where five farm workers stood with loudspeaker to solicit workers in the field of La Casita Farms. The river is in the background. La Casita property stretches behind camera. The farm workers were arrested for abusive language and their loudspeaker was confiscated for the day. The Attorney General advised the district court that the five could also have been charged with Unlawful Assembly and Mass Picketing (see Appendix p. 38, *infra*).

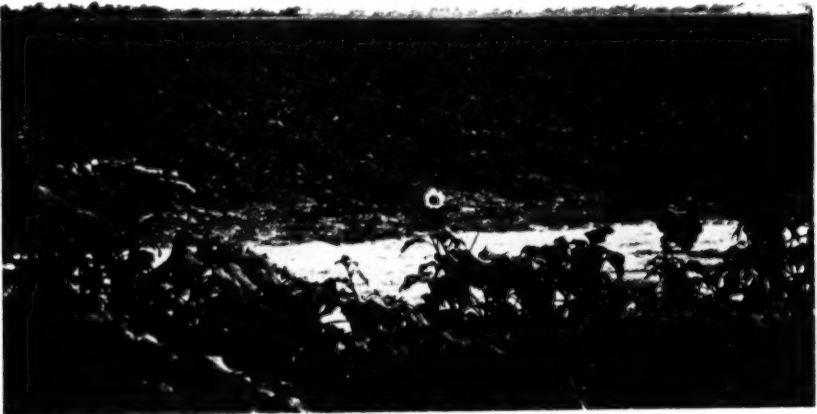


Exhibit 7.13B is taken from the edge of the Bazan property and overlooks La Casita Farms. On February 1, 1967, five Catholic priests stood on the Bazan property at the camera's place on the near side of the dirt road and called out to the workers in the fields to join the union. They were arrested for disturbing the peace. The Attorney General advised the district court that the priests were also guilty of mass picketing, unlawful assembly and abusive language in the use of the Spanish word for squirrel (*scab*). (See Appendix p. 38, *infra*).



Exhibit 7.17F shows Solis property on the right and La Casita Farms property on the left. On May 21, 1967, law officers required picketing farm workers on Solis property to space themselves out every 50 feet. On May 31, 1967, 13 persons were arrested for mass picketing in this area, 10 of them because they were bunched up under the shade of a tree.



Exhibit 7.18L, a picture taken by the Texas Rangers, shows the actual scene viewed by the Rangers on May 18, 1967, when they arrested 22 persons near the entrance to Trophy Farms on U. S. Highway 83. The pavement shows the broad shoulder of the road. Trophy Farms is one mile to the right (west) along the dirt road shown in the center. The other arrestees were in groups along the shoulder of the road.

STATUTES INVOLVED

Mass Picketing Statute

Section 1 of Article 5154d uses the epithet "mass picketing," but this is another of those "mere labels of state law" which disguises interference with innocent First Amendment communication and association. *New York Times v. Sullivan*, 376 U.S. 254, 269 (1964). The statute is patently unconstitutional because of its over-breadth in prohibiting human beings who communicate by picketing or by assembly from gathering together in greater numbers than two at any time or any place and without consideration of the surrounding physical conditions or the size and nature of the employer's operations. The statutory terms "picket" and "picketing" reach every person who acts for an organization who is present for the purpose of inducement, observation or persuasion. So the prohibition is not limited to those who carry picket signs but instead includes everyone who has a sufficient interest in the matter to be present to see what is going on. The same is true of the other absolute prohibition in the statute against "any character of obstruction" without reference to the extent or reasonableness of it. The unconstitutionality of the statute is demonstrated in the opinion of the district court, App. pp. 59-64.

The second respect in which the statute is unconstitutional is its violation of the Equal Protection Clause of the Fourteenth Amendment. The offense of mass picketing can only be committed by pickets or persons who are "stationed by or act for or in behalf of any organization." The statutory definitions of "picket" and "picketing" make it clear that persons who are not stationed by or acting

for or in behalf of an "organization" may gather and picket without reference to the numbers and distance or the obstruction formula of Article 5154d. Both the 50-foot phase and the obstruction phase of the statute incorporate these statutory definitions:

"The term 'picket' as used in this Act shall include any persons *stationed by or acting for and in behalf of any organization* for the purpose of inducing, or attempting to induce, anyone not to enter the premises in question or to observe the premises so as to ascertain who enters or patronizes the same . . ." etc. (Emphasis added)

"The term 'picketing,' as used in this Act, shall include the stationing or posting of one's person or of others *for and in behalf of any organization* to induce anyone not to enter the premises in question, or to observe so as to ascertain who enters . . ." etc. (Emphasis added)

A similar distinction in the regulation of picketing was recently declared invalid. *Police Department of City of Chicago v. Mosely*, 408 U.S. 92 (1972); *Grayned v. City of Rockford*, 408 U.S. 104 (1972). In *Mosely* the court held it to be unconstitutional under the Equal Protection Clause to outlaw all picketing within 150 feet of the school, except labor picketing. The reasoning of *Mosely* is fully applicable here. Discrimination among pickets which is based on whether they represent an organization is no more "tailored to a substantial government interest," 408 U.S. at p. 102, than discrimination based upon "the contents of their expression." *Id.* Indeed, the distinction which the statute draws penalizes "the right of individuals to associate to further their personal beliefs." *Healy v. James*, 408 U.S. 169, 181 (1972). Also rejected in *Mosely* was

a state argument to the effect that non-labor picketing, as a class, is more prone to produce violence than labor picketing. The court responded that the Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to legitimate objectives and that abuse of picketing must be dealt with even-handedly regardless of the subject matter of the picketing.

The constitutionality of the statute was challenged on this ground by plaintiffs by pleading and by pretrial memorandum. The district court did not specifically mention this phase of the case, no doubt because the decision below was handed down on the same day that the Supreme Court decided *Mosely* and *Grayned* on June 26, 1972. Nevertheless, the unconstitutionality of the statute on this ground is clear.

The broad terms of this statute permitted the Texas Rangers to go into the woods to interfere with the farm workers picketing on the Solis property on May 12, 1967. Just so they were authorized by the statute to arrest 13 persons in the wooded areas west of La Casita Farms on May 31, 1967. The absurdity of arresting 10 Mexican farm workers as they lolled in the shade of a tree in the woods was legitimized by the language of the statute. The Rangers were likewise justified in arresting 22 pickets on the side of the road on U. S. Highway 83 on May 18, 1967, without reference to any actual obstruction or inconvenience to anyone.

As we have seen, Texas statutes relegate these farm workers to the economic contest. There is no rational reason why bus loads of farm workers transported in and out of the farms in the employers' buses should see only two lonesome pickets soliciting their support.

It was natural for the growers to call out the peace officers to arrest the small groups of farm workers on each of the above occasions. The statute was a handy tool, indeed, to break organizational cohesion. A more oppressive legal instrument with which to thwart the momentum and debase the credibility of the union effort is hard to imagine.

Secondary Strike, Picketing and Boycott

Article 5154f uses the terminology of "secondary" activity but, in fact, it proscribes inoffensive primary picketing and work stoppage. Here again is the disguising label.

The statute prohibits all picketing and every work stoppage unless engaged in by a majority of an employer's employees or, alternatively, by a majority of the union members employed by the employer. This is so regardless of the purpose or circumstances of the picketing or the stoppage.

Mechanically the statute accomplishes this result by declaring that all picketing and every strike must be incident to a "labor dispute." Otherwise it is "secondary picketing" or a "secondary strike." By definition of the statute, the term "labor dispute" requires a majority.

The Texas Supreme Court held the secondary picketing provisions of the statute to be unconstitutional in a series of cases. *Ex Parte Henry*, 215 S.W.2d 588; *I.U.O.E. v. Cox*, 219 S.W.2d 787; *General Labor Union v. Stephenson*, 225 S.W.2d 958; *Cain, Brogden & Cain v. Local Union No. 47*, 285 S.W.2d 942. In these cases the court held that peaceful picketing by a minority or by strangers

which violates no state policy is constitutionally privileged even though the picketing may elicit sympathetic response from others. The Texas court's decisions culminated in 1956 in *Dallas General Drivers v. Wamix*, 295 S.W.2d 873, a case in which the court turned its back on Article 5154f and resorted instead to the common law to identify genuine secondary activity and to define the circumstances under which secondary activity should be permitted or enjoined in Texas.

Nevertheless, 10 years later the defendant law officers belatedly exhumed the criminal provisions of Article 5154f for use against these farm workers. The holding of unconstitutionality by the district court in this case (App. pp. 64-69) is in part a restatement of what the Texas Supreme Court had already held in the cited Texas cases.

As stated, the Texas court disposed of the "secondary picketing" provision long ago. As to "secondary strike" the statute prohibits every work stoppage by two or more employees unless they constitute a majority of *their* employer's employees. So, practically every sympathetic response by one or more employees to a picket is prohibited wherever it occurs. And further, the statute not only prohibits this sympathetic response but it also prohibits "the establishment, calling, participation in, aiding or abetting" of it.

It was obvious to the world, we think, that the above cited decisions of the Texas court which upheld the constitutional privilege to picket in the face of the "secondary picketing" part of Article 5154f could not be circumvented because the picketing elicited sympathetic response from persons who came to the area of the picketing. Nevertheless, the November 9, 1966 criminal misdemeanor infor-

mations charged that ten fm workers did "participate in and abet a secondary str2" by picketing because two railroad employees declined to cross the picket line, and this was a temporary stoppe of work by two employees of the Missouri Pacific Railroad Company who were not a majority of the employees of the railroad.

The bad faith of such charge is obvious, but the broad language of the "secondary strike" phase of the statute furnished the prete for the law officers to do indirectly what the Texas ecisions had told them they could not do directly.

Also, the cited Texas cas had given full recognition to established principles of e constitutional law of picketing. First, picketing for a leful purpose cannot be denied because only a few are arieved or become activated. Second, lawful primary pketing does not become unlawful because persons w come to the area of the dispute prove to be sympaetic to one side or the other. Third, damages, if any, sulting from the exercise of lawful and constitutionallyuaranteed rights are *damnum absque injuria*. And, specially, the definition of "labor dispute" was declared uncstitutional.

Contrary to these prinoles, the "secondary boycott" phase of Article 5154f pr6bits every plan or concert of action by two or more perns to cause injury or damage to any person by various eans.

Thus, subparagraph (2 (the most conspicuously absurd provision) literally sa that any plan of two persons to cause injury to anotheby picketing is unlawful (regardless of circumstances r motive).

Subparagraph (1) literally says that any plan by two persons to cause injury to another by withholding patronage, labor or other beneficial business intercourse is unlawful (regardless of circumstances or motive).

Subparagraph (3) was not ruled upon or involved in this case.

Subparagraph (4) literally says that any plan by two or more persons to cause injury to another by instigating or fomenting a strike is illegal (regardless of circumstances or motive).

Subparagraph (5) says that any plan of two persons to cause injury to another by interfering with the free flow of commerce is illegal (without reference to the circumstances or motive).

Subparagraph (6) prohibits "any other means" of causing or attempting to cause one employer to inflict damage to another. Literally this prohibits peaceful solicitation of one employer not to make deliveries to another through a lawful primary picket line.

And in all cases any degree of injury or harm, however slight, suffices to make the provision applicable. The dragnet terms of the "secondary boycott" phase of the Texas statute do not square with the reasonable precision of regulation which is the touchstone in the First Amendment area. It was used to charge 14 persons with secondary boycott on account of their supposed intent to engage in either peaceful picketing or word-of-mouth solicitation on the main street of Mission, Texas, to apprise the public of the existence of a labor dispute or

to interfere with the free flow of commerce conducted by the Missouri Pacific Railroad Company.

The district court was fully advised that the Texas bible of secondary picketing and boycott law is the cited *Dallas General Drivers v. Wamix*, 295 S.W.2d 873 decided in 1956. In that case the court upheld the legality of ambulatory picketing in certain circumstances which are not compatible with the dragnet terms of Article 5154f. It laid down the public policy of Texas relative to the inducement of employees of neutral employers to give aid and sympathy to labor disputants. It specified two "important factors" by which the legality of picketing is to be judged when it has secondary effects, namely, (1) the good faith intent of the union or the employees to assert pressure only on the primary employer so that the effect on neutrals is purely incidental, and (2) the balancing of relative rights of all affected parties against the harm to the other parties and to the public from permitting or restraining the picketing. The determination was committed to the sound discretion of the equity court with the observation that only rarely would the issue be decided as a law question. 295 S.W.2d at 884. This balancing procedure is quite similar to the approach of this Court in *I.B.T. v. Vogt*, 354 U.S. 284 (1957), with its evaluation of "the balance struck by a state between picketing . . . and competing interests of state policy." 354 U.S. at 290.

Thus, the viable secondary picketing, secondary strike and secondary boycott law of Texas was not disturbed by the decision of the district court. The *Wamix* decision still defines the State's stringent regulation of secondary activity in common law terms at the hands of the equity court.

Since 1956 the Texas Legislature has not bothered to redefine secondary prohibitions in constitutional terms, apparently content with *Wamix*.

The district court in this case was confronted with the exhumation by the law officers of the criminal provisions of this obsolete and unconstitutional statute for the bad faith purpose of harassment.

The district court's demonstration of the unconstitutionality of Article 5154f is at Appendix pp. 64-69.

Unlawful Assembly

The district court's demonstration of the unconstitutionality of Texas Penal Code Article 439, the Unlawful Assembly statute, is at Appendix 74-77.

At pp. 22-26 of the Jurisdictional Statement is Appellants' argument in support of this statute, which is somewhat inept because it seems to say that Article 439 cannot stand alone. It can, however, by the express provisions of Texas Penal Code Article 452 which is set out below. In any case, the district court assumed for purposes of discussion that the "right" to be protected from deprivation or disturbance is one which the State may legitimately protect (App. 75).

Article 439 of the Texas Penal Code, Unlawful Assembly, provides as follows:

An "unlawful assembly" is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof.

Article 452 provides:

If the purpose of the unlawful assembly be to effect any illegal object other than those mentioned in the preceding articles of this chapter, all persons engaged therein shall be fined not more than two hundred dollars.

This ancient statute, enacted in 1879, is not "directed to inciting or producing imminent lawless action" by advocacy but also encompasses (1) guilt by association, (2) abstract advocacy, (3) intent to aid "in any manner" the deprivation of any person of any right illegally, and (4) finally, the intent to aid in any manner the disturbance of any person in the enjoyment of any right.

The statute does not square with First Amendment protection of the right of assembly. *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Healy v. James*, 408 U.S. 169 (1972).

Texas courts have not limited the statute to hard core or lawless action. For example, in *Brisco v. State*, 341 S.W.2d 432 (1961), cited in the Jurisdictional Statement at p. 24, the court held that the indictment should specify whether the offense involved an intent to use violence to disturb the victim or whether it involved an intent to use means other than violence to disturb the victim in his rights.

Interestingly, the Jurisdictional Statement at p. 23 makes the following argument:

"Thus this portion of the statute makes criminal a conspiracy to do something that the law of the State, including the civil statutes and the common law, prohibits."

Literally, the statute does indeed define unlawful assembly to include an intent of three or more people to aid each other to disturb some person in the enjoyment of one of his common law rights.

In this case Reverend James Drake and Gilbert Padilla were arrested for unlawful assembly for praying on the courthouse steps on January 26, 1967. It was stipulated that the courthouse property had been used in the past for nighttime rallies of politicians and for dances. No Texas statute prohibited the presence of these men at the scene of their prayers. The disturbance of the "right" of another is easy to supply—perhaps the right of a janitor, a jailer, or an atheist enjoying his peace on the grounds.

Again on May 26, 1967, ten union sympathizers at one time and four other union sympathizers at a later time were arrested for unlawful assembly on the main street of Mission, Texas. The first group of ten had the intent to aid each other in picketing although the picketing had not started. The second group of four arrived later with the intent to aid the first ten, although the first ten had already been taken to jail. The "offense" or the "disturbance of a right" could be supplied by the Texas secondary boycott statute. That statute makes it a crime for any two persons to plan to cause injury to another "by picketing." Or, the offense could be supplied by another provision of that statute which prohibits the plan of any two persons to cause injury to another by interfering with the free flow of commerce.

Again on February 1, 1967, five Catholic priests assembled in a wooded area on private property adjacent to La Casita Farms. There they solicited the workers in

the field to join the union and were promptly arrested for disturbing the peace. As pointed out, the Attorney General of Texas advised the court in its post-trial memorandum that "everyone present could have been charged with the violation of Article 5154d, mass picketing, with Articles 439 and 449, unlawful assembly, and possibly under Article 483, abusive language, as Father Smith stated that they were calling the workers 'scab' in Spanish in attempting to use the word that has punch to it and an edge on it." (See Appendix, *infra*, p. 38)

This unlawful assembly statute in addition to its overbreadth lends itself to all manner of unpredictable and selective enforcement.

Abusive Language

The district court's demonstration of the unconstitutionality of Texas Penal Code Article 482 is at Appendix 72-74. The statute provides:

"Any person who shall in the presence or hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars."

In all material respects this statute is identical to the Georgia statute in *Gooding v. Wilson*, 405 U.S. 518 (1972).

At Footnote 22 (App. p. 83) the district court reviewed Texas decisions to show that this statute has not

been limited to the kind of "fighting words" contemplated by *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). The Jurisdictional Statement does not even address itself to the cases discussed in Footnote 22 (J.S. 21-22).

The constitutional posture of these plaintiffs is far superior, however, to that of the defendant in *Gooding v. Wilson*, *supra*. In this case on January 26, 1967, five farm workers standing on the banks of the Rio Grande River were addressing themselves to a large number of workers in the fields by means of a loudspeaker. Deputy Sheriff Roberto Pena arrested all five for abusive language and confiscated their loudspeaker until the next day.

We do not have here the individual, face-to-face delivery of severely insulting language which *Chaplinsky* contemplates. To the contrary, there was distance and also the impersonal aspect stemming from the group attitude of the union supporters on the one hand in contrast to the group indifference or rejection of their cause by the workers on the other.

The Texas court applies the abusive language statute in cases other than direct personal abuse by one person to another of a provocative kind which will likely provoke a breach of the peace in the circumstances. In addition to the cases cited in Footnote 22 of the district court's opinion, the Texas court has held that the abusive language statute was violated when the defendant on his own premises shouted to someone in his house: "Call Mitchell, these god damned bastards got guns." These remarks were not even addressed to the two law officers referred to who were crouched behind vehicles parked in the defendant's driveway. Under this interpretation, the statute is violated

even though the person referred to would not commit a responsive breach of the peace because of official position and responsibility. As in *Gooding v. Wilson, supra*, this leaves the standard of guilt to the creation of the trier of fact in each case. *Duke v. State*, 328 S.W.2d 189 (1959).

The Texas Abusive Language Statute is a natural implement for hostile law officers to utilize oppressively in the group animosities which inhere in labor disputes. Unfriendly law officers can be quick to conclude that the persuasions, arguments and appellations of the union supporters are "abusive" to a degree which might be reasonably calculated to provoke a responsive breach of the peace by the nonstrikers. As previously pointed out, at or about the same time one of five Catholic priests used the Spanish word "esquirol" which literally means "squirrel" but is the general equivalent of the English word "scab" in the context of a labor dispute. The Attorney General expressly advised the Court that the abusive language statute was violated by the use of this word on the occasion in question.

SUMMARY AND CONCLUSION

Appellants have submitted the following basic points in support of this Motion to Affirm or Dismiss:

First, the harrassment fact findings are unchallenged and clearly sufficient to justify, if not require, the intervention of the federal court under *Younger v. Harris*.

Second, the injunctive relief granted is appropriately confined to the evil encountered by the district court and leaves state authorities free to proceed in pending prosecu-

tions against these Appellees and in future prosecutions against anyone. Without intending to be disrespectful to state officials, we suggest that the failure to seek appropriate elucidating constructions from state courts or appropriate legislative corrective action amounts to official laziness. It seems easier to pound the table in the Supreme Court in the name of State Sovereignty.

Third, the four statutes involved here are clearly out of bounds constitutionally. This is validated in the case of each statute by actual application of it to protected speech and assembly in bad faith. In summary:

1. The 50-foot requirement, however reasonable for some situations, is plainly absurd for others. We have seen the unfair application of the statute for the arrest of farm workers in small groups in rural territory when no obstruction of any kind existed and when the 50-foot spacing of pickets was preposterous. Additionally, the statute is readily identified to be unconstitutional under the Equal Protection Clause since it applies the numbers, distance and obstruction formula only to pickets and persons who act on behalf of an organization while leaving independent pickets and persons free of these restrictions even though they may act in the same numbers, time and place. *Police Department of the City of Chicago v. Mosely, supra*, fits the statute completely.

2. The secondary picketing and secondary strike provisions have already been invalidated by the Supreme Court of Texas, because they apply the mechanical and artificial criterion of minority versus majority to determine the legality of all picketing and every work stoppage. The secondary boycott provision has already been rendered

obsolete by the Texas Supreme Court in the *Wamix* decision, *supra*. The decision of the district court does not disturb viable secondary boycott law of Texas. It does prevent further treacherous use of the obsolete criminal provisions by these particular law officers.

3. The unlawful assembly statute is readily identified to be unconstitutional under *Brandenburg v. Ohio*, *supra*, and *Healy v. James*, *supra*.

4. The abusive language statute is readily identified to be unconstitutional under *Gooding v. Wilson*, *supra*. Moreover, the actual application made of this statute to the impersonal labor dispute arena confirms that *Chaplin-sky* principles do not save this particular statute.

The organizational effort in this case began in June 1966 and ended one year later when this suit was filed. This case was tried to the three judge court in 1968. The court held this case under advisement for four years while the Supreme Court heard argument and re-argument in *Younger v. Harris* and companion cases.

The opinion of the district court rendered in July 1972 is in careful harmony with *Younger v. Harris*. The statutes were declared invalid only in the light of compelling precedents in the First Amendment area and only upon clear proof that the statutes had actually been used improperly to suppress constitutional conduct in a bad faith program of the law officers to take sides with the growers in the industrial dispute.

It is submitted that this case is sufficiently clear that it does not require plenary consideration by this Court or further delay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Affirm or Dismiss was mailed to Hon. John Hill, Attorney General of Texas, P. O. Box 12548, Capitol Station, Austin, Texas 78711, on this the 16th day of April, 1973.

Chris Dixie

APPENDIX TO MOTION TO AFFIRM**Art. 5153. Other Rights and privileges**

It shall be lawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce by peaceable and lawful means, any person to accept any particular employment or to enter or refuse to enter any pursuit or quit to relinquish any particular employment or pursuit in which such person may then be engaged. Such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof.

Art. 5154b. Liability of labor organizations for damages

Section 1. A labor organization whose members picket or strike against any person, firm or corporation shall be liable in damage for any loss resulting to such person, firm or corporation by reason of such picketing or strike in the event that such picketing or strike is held to be breach of contract by a Court of competent jurisdiction.

Art. 5207a § 1

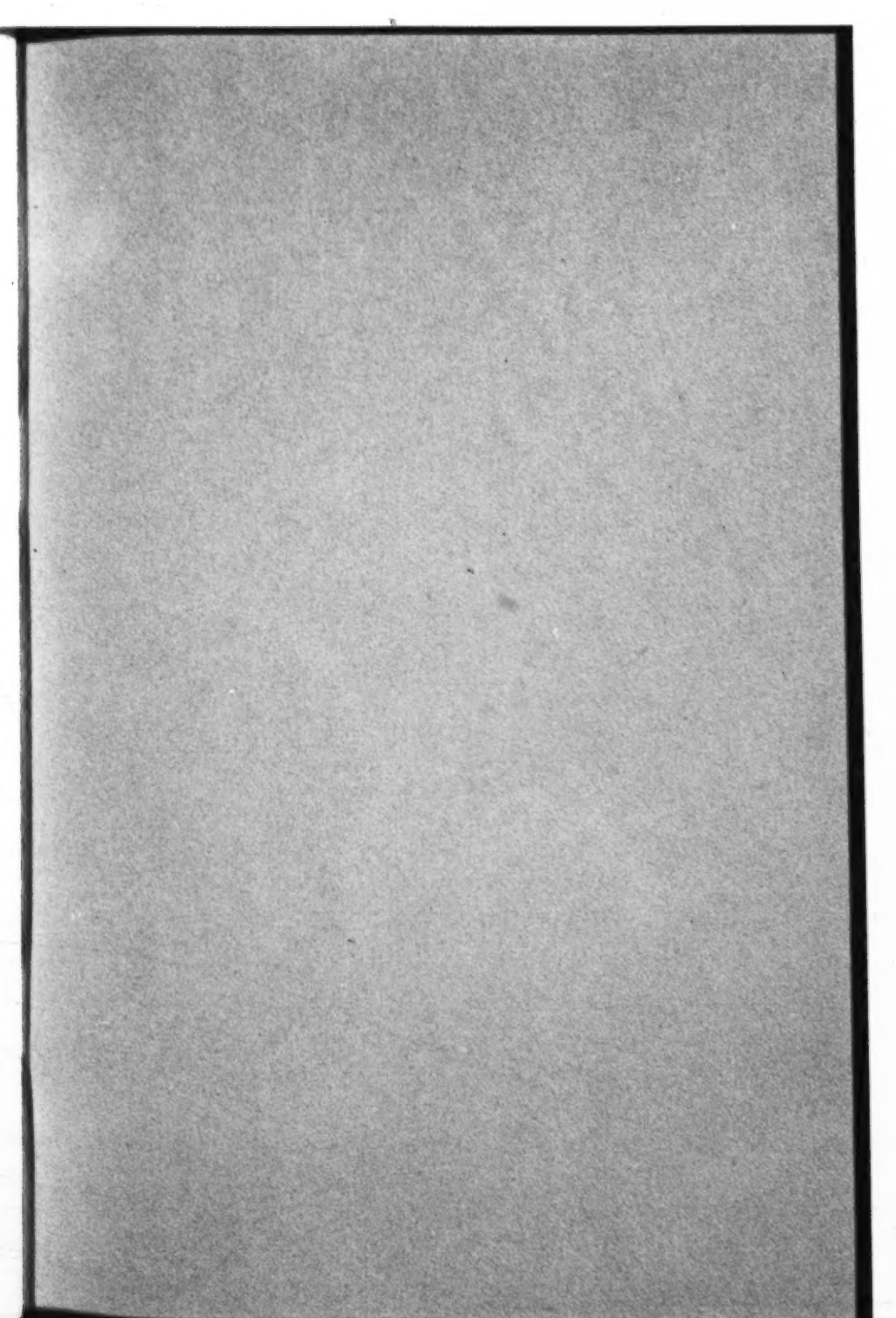
The inherent right of a person to work and bargain freely with his employer, individually or collectively, for terms and conditions of his employment shall not be denied or infringed by law, or by any organization of whatever nature.

EXCERPT FROM PAGE 20 OF ATTORNEY
GENERAL'S POST HEARING BRIEF
TO THE DISTRICT COURT:

"In the next scene, *Paragraph 7.11*, Plaintiffs offered no evidence to rebutt (sic) the fact that they were using a loud speaker and calling to Augustine Lopez and Fredrico Pena and other workers by using 'the foulest words known to that language in this area.' . . . Assuming the correctness of this uncontroverted testimony, Plaintiff could clearly have been charged under Articles 482, Abusive Language; 439, 449, Unlawful Assembly; 455, 464, 466, 469, Rioting Statutes; and 5154d, V.C.S." (mass picketing).

EXCERPT FROM PAGE 22 OF ATTORNEY
GENERAL'S POST HEARING BRIEF
TO THE DISTRICT COURT:

"On February 1, 1966, the instance complained about in *Paragraph 7.13* occurred. In reviewing the record, there is some doubt as to whether or not Penal Code, Article 474 applies. Based on the testimony of the two Catholic priests, Father Smith and Father Killion, everyone present could have been charged with violation of Article 5154d, Mass Picketing, with Articles 439 and 449, Unlawful Assembly; and possibly under Article 482, Abusive Language, as Father Smith stated that they were calling the workers 'scab' in Spanish in attempting to use the word that has 'punch to it and an edge to it.'"



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MICHAEL RODAN

IN THE
Supreme Court of the United States
OCTOBER TERM 1972

No. 72-1125

A. Y. ALLEE, ET AL., *Appellants*,
v.
FRANCISCO MEDRANO, ET AL., *Appellees*.

On Direct Appeal from the United States Three-Judge
District Court for the Southern District of Texas

**BRIEF AMICUS CURIAE ON BEHALF OF BROWN
& ROOT, INC., THE DOW CHEMICAL COMPANY,
SAN ANTONIO PORTLAND CEMENT COMPANY,
EASTEX INC., K. O. STEEL CASTINGS, INC.,
E. I. DU PONT D'NEMOURS & COMPANY, GULF
OIL CORPORATION, ASSOCIATED GENERAL
CONTRACTORS—DALLAS BUILDING CHAPTER,
EXXON, INC., SHELL OIL COMPANY, AND
LONE STAR STEEL CORPORATION,
URGING REVERSAL**

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IN THE
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OCTOBER TERM 1972

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OIL CORPORATION, ASSOCIATED GENERAL
CONTRACTORS—DALLAS BUILDING CHAPTER,
EXXON, INC., SHELL OIL COMPANY, AND
LONE STAR STEEL CORPORATION,
URGING REVERSAL**

The employers named above respectfully submit their brief *amicus curiae* in support of Appellants, having obtained consent to do so from all parties. Copies of such consents are made a part hereof as Appendix A.

QUESTION PRESENTED

These *amici curiae* limit their arguments to the issue of whether the three-judge district court erred in declaring unconstitutional and enjoining the enforcement of Article 5154(d), Section 1, Vernon's Texas Civil Statutes, as an unlawful encroachment on First Amendment rights.

INTEREST OF AMICI CURIAE

The district court's judgment is of major significance to all employers within the State of Texas. The *amici curiae* are employers with substantial business operations within the State dealing regularly with labor organizations and have a crucial interest in the district court's opinion invalidating and declaring unconstitutional Section 1 of Article 5154(d), Texas Revised Civil Statutes, which defines and regulates mass picketing in connection with labor disputes. The decision has had and, unless reversed, will continue to have a great and injurious impact on industrial peace in Texas. It improperly undermines legitimate State interests in the safe and peaceful conduct of labor picketing, strikes, work stoppages and related labor disputes, to the detriment of the public, labor and industry.

The *amici curiae* were not parties to this case, but, because their interests will be seriously affected by the district court's decision, they should be given an opportunity to be heard and to demonstrate to this Court that Section 1 of Article 5154(d) should not be declared unconstitutional, since it properly safeguards the State's interest in peace and harmony in a labor dispute while preserving the right to engage in effective peaceful picketing as a means of communication.

SUMMARY OF ARGUMENT

The decision of the court below is incorrect for two reasons. First, that court ignored or misapplied the principles of federal restraint and noninterference with state proceedings as announced by this Court. Secondly, the court below erred by deciding the constitutionality of Article 5154(d), Section 1 on the incorrect premise that the article regulates "public issue" picketing. Properly, the court below should have construed Article 5154(d) in the true context of its narrow purpose, *viz.*, achieving a reasonable balance between the State's legitimate interest in the peaceful conduct of labor disputes and individual rights to effective communication through picketing. A fair balance having been accomplished, the statute should not have been declared unconstitutional.

ARGUMENT

I.

THE DISTRICT COURT ERRED IN FAILING TO ADHERE TO RECOGNIZED DOCTRINES OF JUDICIAL RESTRAINT AND NON-INTERFERENCE WITH STATE CRIMINAL PROCEEDINGS, THUS UNNECESSARILY DECIDING COMPLEX CONSTITUTIONAL ISSUES AND NEEDLESSLY INTERFERING WITH LEGITIMATE STATE PROCESSES

Beginning with *Hayburn's Case*, 2 Dall. 409 (1772), and culminating in Justice Brandeis' eloquent statement in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936), this Court has recognized the obligation of federal courts to exercise restraint in constitutional determinations. Among the principles announced by Mr.

Justice Brandeis, and reaffirmed in *Rescue Army v. Municipal Court*, 331 U.S. 549 (1947), is the rule that the Court will not anticipate a question of constitutional law in advance of the necessity of deciding it, nor will the Court void a statute without first ascertaining whether a construction is fairly possible by which the question of constitutionality may be avoided. The nuances of these guidelines and the corollaries which flow from them have developed into a recognized and commendable reluctance of federal courts to wield their excising powers over state statutes books.¹

Cognate to the doctrine of judicial restraint is the norm of noninterference with state proceedings. Although in rare situations a federal court is granted leave to intervene, such intrusion has always been firmly bounded by restraints, both judically self-imposed, *e.g.*, *Douglas v. City of Jeannette*, 319 U.S. 157 (1943), and statutorily decreed, *e.g.*, 28 U.S.C. §§2281, 2282, 2283, 2284, 1253, 1341, 1342. In *Ex Parte Young*, 209 U.S. 123 (1908), the "fountainhead of federal injunctions against state prosecutions," this Court characterized the power and its proper exercise in broad terms. However, as the Court later observed in *Dombrowski v. Pfister*, 380 U.S. 479 (1965),

... considerations of federalism have tempered the exercise of equitable power, for the Court has

1. Lower courts have traditionally recognized that they must be cautious in resolving complex constitutional issues through the use of injunctive or declaratory relief. *See, e.g.*, *McCahill v. Borough of Fox Chapel*, 438 F.2d 213, 216 (3d Cir. 1971); *Cole v. McClellan*, 439 F.2d 534 (D.C. Cir. 1970); *Lampkin v. Connor*, 360 F.2d 505 (D.C. Cir. 1966); and *Mora v. Brownell*, 231 F.2d 579 (9th Cir. 1955).

recognized that federal interference with a State's good-faith administration of its criminal laws is peculiarly inconsistent with our federal framework. It is generally to be assumed that state courts and prosecutors will observe constitutional limitations as expounded by this Court, and that the mere possibility of erroneous initial applications of constitutional standards will usually not amount to the irreparable injury necessary to justify a disruption of orderly state proceedings. 380 U.S. at 484-5.

The parameters of noninterference after *Dombrowski* were less than certain,² causing some to believe that lower federal courts were free to roam through county courthouses to meddle in the administration of criminal justice. However, proper balance in the delicate scheme of federalism was regained by the opinion in *Younger v. Harris*, 401 U.S. 37 (1971) and its companion cases.

In *Younger*, the Court stressed that only under most unusual circumstances should injunctive relief be granted in a federal court against a pending state criminal prosecution. Contemporaneous with *Younger v. Harris*, the Court in *Samuels v. Mackell*, 401 U.S. 66 (1971), addressed itself to the implications of this attitude for declaratory judgment actions and held that "under ordinary circumstances the same considerations that require the withholding of injunctive relief will make declaratory relief equally inappropriate," noting that "... the same equitable principles relevant to the propriety of an injunction must be taken into consideration by federal district courts in determining whether to issue a declaratory judgment,

2. See Maraist, *Federal Injunctive Relief against State Court Proceedings: The Significance of Dombrowski*, 48 Tex. L. Rev. 535 (1970).

and where an injunction would be impermissible under the principles, declaratory relief should ordinarily be denied as well." *Id.* at 69, 73.

The *Younger* and *Samuels* cases are more than technical exercises in avoiding conflicts between judicial systems. Both decisions go to the very core of the concept of "our federalism,"

. . . [a] system in which there is sensitivity to the legitimate interests of both State and National government, and in which the National government, anxious though it may be to vindicate and protect federal rights and federal interests, *always endeavors to do so in ways that will not unduly interfere with legitimate activities of the States.* *Younger v. Harris, supra*, at 44 (emphasis added).

In sum, *Younger* "made it clear that *Dombrowski* did not displace the traditional limitations on federal intervention in state criminal cases, and thus ended the belief that *Dombrowski* should be interpreted broadly." Note, 59 Calif. L. Rev. 1949 at 1550 (1971).

While dutifully repeating the *Younger* tests and making findings to support them, the court below obviously captured only the letter, not the spirit, of *Younger* and *Samuels*. *Younger* (as was even *Dombrowski*) is a forceful call for judicial restraint in the interest of comity and federalism; to which the *Medrano* opinion pays lip service but in fact answers with an untoward display of federal judicial excess.

The *amici curiae* herein hold no brief for the alleged actions of the defendant peace officers of the State of Texas. If they engaged in a course of conduct which

amounts to the "bad faith" or "harrassment" defined in *Younger*, then indeed the *amici curiae* agree that the federal court should be open to them. But the court below erred in grasping the subject matter by means of the *Younger* tests, and then plunging headlong to unwarranted extremes.³

3. As Part II of this Brief makes clear, Article 5154(d), Section 1 is not facially overbroad; it is a precisely drawn and legitimate state regulation of labor picketing. The court below professes that it . . . stayed its hand for some four and one-half years. During this time we have not been shown a state interpretation narrowing or voiding these statutes on federal constitutional grounds in the intervening years. If abstention was ever appropriate it is no longer. Since we find no special circumstances requiring abstention or further delay, we proceed to the merits of the plaintiffs' constitutional challenge. 347 F. Supp. at 621.

However, the courts of Texas have done precisely what the court below chooses to gainsay, *Geissler v. Coussolis*, 424 S.W.2d 709 (Tex. Civ. App.—San Antonio 1967, writ ref'd n.r.e.) and discussion, *infra*. The dissent of Justice Harlan in *NAACP v. Button*, 371 U.S. 415 (1963) is called to mind:

It savors almost of disrespect to the Virginia Supreme Court of Appeals, whose opinion manifests full awareness of the considerations that have traditionally marked the line between professional and unprofessional conduct, to read this part of its opinion otherwise.

* * *

In my view, however, the statute as construed below is not ambiguous at all.

* * *

But even if the statute justly lent itself to the now attributed ambiguity, the Court should excise only the ambiguous part of it, not strike down the enactment in its entirety. Our duty to respect state legislation, and to go no further than we must in declining to sustain its validity, has led to a doctrine of separability in constitutional adjudication. . . .

* * *

. . . [T]he kind of approach that the majority takes to the statute is quite inconsistent with the precept that our duty is to construe legislation, if possible, 'to save and not to destroy.' *Id.* at 468-9 (Harlan, J., dissenting) (emphasis added).

Accepting the paramount interest in protecting freedom of speech from the "chilling effect" of overbroad state regulation, there are, nonetheless, "recurring indications in Supreme Court opinions that even in these civil rights and civil liberties cases absention might be appropriate if a state statute could easily be interpreted so as to avoid the constitutional question."⁴

This was, in fact, precisely what this Court did in *Dombrowski*. It authorized prompt and efficacious relief to the petitioners, yet offered the state a chance to determine the meaning and breadth of its own statute:

Here, no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, and appellants are entitled to an injunction. *The State must, if it is to invoke the statutes after injunctive relief has been sought, assume the burden of obtaining a permissible narrow construction in a noncriminal proceeding before it may seek modification of the injunction to permit future prosecutions.* [footnote omitted].

* * *

Although we hold today that appellants' allegations of threats to prosecute, if upheld, dictate ap-

4. Note, 59 Calif. L. Rev. 1549 (1971), citing, e.g., *Zwicker v. Koota*, 389 U.S. 241, 248-49 (1967) (dictum); *Dombrowski v. Pfister*, 380 U.S. 479, 491 (1965) (dictum). See also, *Askew v. Hargrave*, 401 U.S. 476, 477-78 (1971) (per curiam); *Fornaris v. Ridge Tool Co.*, 400 U.S. 41 (1970) (per curiam); *Reetz v. Bozarnich*, 397 U.S. 82 (1970). "... [I]n *Dombrowski v. Pfister*, the Court seemed to hold that whenever a vague or overbroad statute chilled free expression and was not susceptible of a rehabilitating construction, the *Douglas* test is satisfied and a federal injunction prohibiting enforcement of the statute is appropriate." 59 Calif. L. Rev. at 1560 (emphasis added).

propriate equitable relief without awaiting declaratory judgments in the state courts, *the settled rule of our cases is that district courts retain power to modify injunctions in light of changed circumstances.* * * * *Our view of the proper operation of the vagueness doctrine does not preclude district courts from modifying injunctions to permit prosecutions in light of subsequent state court interpretation clarifying the application of a statute to particular conduct.*

* * *

The record suffices, however, to permit this Court to hold that, *without the benefit of limiting construction*, the statutory provisions on which the indictments are founded are void on their face; *until an acceptable limiting construction is obtained, the provisions cannot be applied to the activities of SCEF, whatever they may be.* 380 U.S. at 490-7 (emphasis added).⁵

Another *Younger* companion, *Perez v. Ledesma*, 401 U.S. 82 (1971), reemphasizes the sound principle, ignored by the court below, that an illicit use of a valid statute calls for *enjoining the constitutionally prohibited application, not striking down the entire enactment*:

Where the ground is bad-faith harassment, intervention is justified whether or not a state prosecution

5. The *amici curiae* maintain that a rehabilitating construction is easily obtainable in a single state criminal prosecution. As observed in Part II of this Brief, *infra*, Texas courts are well aware that Article 5154(d), is applicable only to labor picketing. In any event, even where such "single-prosecution" rehabilitation is found improbable, as in *Dombrowski*, the Court has enjoined only the *unconstitutional application to petitioners, not declared the statute irretrievably void*.

is pending. Intervention in such cases does not interfere with the normal good-faith enforcement of state criminal law by constitutional means, and does not necessarily require a decision on the constitutionality of a state statute. It simply prevents particular unconstitutional use of the State's criminal law in bad faith against the federal plaintiff. Under *Douglas v. City of Jeanette*, *supra*, at 164, a person has no immunity from a state prosecution 'brought lawfully and in good faith,' but he is entitled to federal relief from a state prosecution which amounts to bad-faith harassment. [Footnote omitted]. *Id.* at 120 (emphasis added).

Expressions of this Court's unwillingness to allow blunderbuss attacks on state enforcement are legion.⁶ In *City of Greenwood v. Peacock*, 384 U.S. 808 (1966), this Court, while citing *Dombrowski* and acknowledging the propriety of federal remedies, nonetheless emphasized the importance of selecting the particular federal remedy which will cure the ill without killing the patient.⁷ It is this surgical excision technique which is so obviously lacking in the opinion of the panel below.

In addition to its disregard for the spirit of *Younger v. Harris*, *supra*, the district court further erred in its application of the *Younger* tests to Article 5154(d). The court below relied on findings of "bad faith" enforce-

6. See *Reetz v. Bozanich*, 397 U.S. 82 (1970) and *Fornaris v. Ridge Tool Co.*, 400 U.S. 41 (1970); and especially the dissenting opinion of Chief Justice Burger in *Wisconsin v. Constantineau*, 400 U.S. 433 (1971).

7. Remedies available include damage actions against state officials under 42 U.S.C. §1983, *Monroe v. Pape*, 365 U.S. 167 (1961) as well as criminal actions under 18 U.S.C. §241, *U.S. v. Guest*, 383 U.S. 745 (1966).

ment of various state criminal statutes such as Texas Penal Code Article 474, and laws governing unlawful assembly, disturbing the peace, trespassing and assault in voiding Article 5154(d). In only two instances does the district court even refer to Article 5154(d) as being an alleged basis of official action. In neither case does the court find that these actions were other than in good faith and within the "hard core" of activity prohibited by 5154(d).⁸ The impropriety of this approach is patent, for the necessity of declaratory and injunctive relief with respect to Section 5154(d) must stand on its own. When one views the part played by Article 5154(d) in the alleged efforts to discourage the picketers' First Amendment rights, it at once becomes apparent that neither bad faith prosecution nor irreparable injury existed with respect to this Article.

With erroneous determinations of both prongs of the *Younger* test, the validity of the declaratory judgment striking down Article 5154(d) is called into serious question. The *amici curiae* herein respectfully urge that such declaration was reached in total disregard of the standards of judicial restraint formulated by this Court and must, accordingly, be vacated.

8. On the first occasion, Capt. Allee merely "checked to make certain that the pickets were at least fifty feet apart and in accordance with Article 5154(d)." 347 F. Supp. at 615. No one has contended that on the second occasion, when the arrests occurred, the pickets were not in violation of the statute and presenting a threat to peace. See *Dombrowski v. Pfister*, 380 U.S. at 491-92.

II.

ARTICLE 5154(d), SECTION 1, IS A VALID LABOR STATUTE REGULATING THE MANNER IN WHICH THE RIGHT TO PICKET IS EXERCISED

Although the district court improperly elected to decide the merits of the constitutional challenge to Article 5154(d), its erroneous conclusion on the merits presents an equally compelling reason for vacating the judgment declaring unconstitutional the mass picketing statute. The reasonableness of the state regulation on mass picketing in labor disputes is revealed in the specific and carefully drawn definition of mass picketing contained in paragraphs 1 and 2 of Article 5154(d)(1). Paragraph 1 declares unlawful as mass picketing the congregating of more than two pickets within either 50 feet of any entrance to the premises being picketed or within 50 feet of any other picket or pickets. Paragraph 2, in order to ensure free access to premises subject to picketing, forbids the blocking by physical obstruction of free ingress and egress at the entrances of premises being picketed. The statute thus allows the facts involved in a labor dispute to be publicized adequately while, at the same time, those choosing to enter the premises subject to picketing are provided access without intimidation or impediment.

The court below, however, invalidated the statute on the ground that it is overbroad⁹—the conduct proscribed by the statute allegedly includes areas of protected freedoms.¹⁰ The district court's decision ignores the funda-

9. 347 F. Supp. at 625.

10. See *Hunter v. Allen*, 422 F.2d 1158, 1161 (5th Cir. 1970).

mental policy of decisions of this Court that a state has a legitimate and substantial interest in regulating picketing of all types, including the right to place restrictions on the numbers of pickets and to protect the right of free ingress to and egress from establishments subject to picketing.¹¹ The *amici curiae* submit that the aspects of Article 5154(d) declared unconstitutional below conform to constitutional guidelines established by this Court.

A matter of fundamental importance to the present case is the failure of the court below to understand the basic purpose of the State of Texas in enacting Article 5154(d). The court distinguished between so-called "public" and "private" issue picketing and classified Article 5154(d) as a statute regulating "public" issue picketing. The court thus misconstrued the statute and overlooked the legitimate interest of the state in regulating labor disputes.

Contrary to the conclusion of the court below, Article 5154(d) was enacted and designed "to set the limits of permissible contest open to industrial combatants." *Thornhill v. Alabama*, 310 U.S. 88, 104 (1940). This purpose is clear from the fact that the statute is contained in the section of the Texas statutes that regulates "labor organizations," and, further, every case decided pursuant to Article 5154(d), including the present case, has involved a labor dispute. The purpose of the State of Texas in promulgat-

11. See *Cox v. Louisiana*, 379 U.S. 536, 554-55, 577-78 (1965); *Teamsters, Local 695 v. Vogt*, 354 U.S. 284 (1957); *Carpenters Union, Local 213 v. Ritter's Cafe*, 315 U.S. 722, 738 (1942); *Milk Wagon Drivers Union, Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 297, 318-19 (1941); *Thornhill v. Alabama*, 310 U.S. 88, 99, 103-04 (1940); *American Steel Foundries v. Tri-City Trades Council*, 257 U.S. 184, 206-07 (1921); *Teller, Picketing and Free Speech*, 56 Harv. L. Rev. 180 (1942).

ing the specific restrictions on mass picketing is set forth in the preamble to Article 5154(d):

It is a matter of public knowledge that picketing as exercised by labor organizations is used only as a means of expression of ideas to the public generally, but likewise as a means of coercion, and conduct otherwise dangerous to the health, safety and general welfare of the people of Texas. . . . While it is necessary to safeguard the fundamental American rights of freedom of speech and assembly, it is likewise necessary to ensure the safety and general welfare of the people and to guarantee their right to engage in their daily pursuits without unlawful interference from others. . . .

In order to safeguard the health, safety and general welfare of the people of Texas, it is necessary to regulate picketing.

Thus, any determination of the constitutional validity of the mass picketing statute must proceed on the basis that it is a narrowly drawn regulation designed to regulate *conduct*¹² in labor disputes. Moreover, decisions of this

12. The distinction between pure speech and picketing has been stated as follows:

While the decisions since *Thornhill* have been attacked as nearly negating its extension of first amendment protection to picketing, they can be justified on the ground that picketing 'is more than free speech,' that is, more than communication of facts and ideas. Although picketing may attempt to influence general attitudes or future political action, it also demands an immediate decision to respect or pass through the picket line. Those who refrain from crossing a picket line may do so not because of rational conviction but rather because of general uneasiness, embarrassment, or fear of getting involved or injured. The informational content of picketing is frequently small for picketing often communicates no more than the identity of the group and an assertion that it is aggrieved, without meaningful

Court make it clear that picketing, whether "private" issue or "public" issue, is conduct, and, as such, picketing is subject to regulation by the states.

That the court below erred, not only in classifying the type of conduct regulated by the mass picketing statute but also in concluding that the statute is unconstitutional, is demonstrated by the principles developed by this Court in the area of state regulation of peaceful picketing.¹³ The opinion in *Thornhill v. Alabama*, *supra*, which was relied upon by the court below, sets forth the legitimate interest of the states in this area. The vice in *Thornhill*, as distinguished from the present case, was a *total* ban on all peaceful picketing. The statute thus was deemed unconstitutional because, instead of establishing limits on picketing, the statute prohibited all peaceful picketing:

The statute as thus authoritatively construed and applied leaves room for no exceptions based upon either the number of persons engaged in the proscribed activity, the peaceful character of their de-

conveying to the public the 'nature and causes of a labor dispute' as envisioned in *Thornhill*. Moreover, the target of picketing, the store or factory management, can seldom, if ever, communicate effectively by publicizing its version of the dispute, for in most cases the only feasible means of rebuttal is counter-picketing or handbilling, and the increased number of persons in front of an establishment may turn away even more potential customers. Picketing is usually designed to persuade its target not by appealing to his judgment but by causing economic loss. In short, the social policy favoring free exchange of ideas is often not served by picketing.

Note, *Freedom of Expression in a Commercial Context*, 78 Harv. L. Rev. 1191, 1208 (1965).

13. There is no question concerning the right to prohibit violent picketing. See *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941), where the Court upheld a state injunction that enjoined both violent and peaceful picketing.

meanor, the nature of their dispute with an employer, or the restrained character and the accurateness of the terminology used in notifying the public of the facts of the dispute.

Id. at 99 (emphasis added).

The principles initially established in *Thornhill* have gradually been brought forward and clarified by this Court. The recurrent theme in these decisions is that the manner and means of regulating picketing are within the wisdom of the states, so long as a blanket prohibition of all picketing is avoided.¹⁴ The clear distinction between pure speech and picketing is evident from Mr. Justice Frankfurter's opinion in the *Hanke* case.¹⁵ There, the Court upheld a state injunction of peaceful picketing designed to gain an unlawful objective and indicated that wide deference should be given to state regulation:

[W]e must start with the fact that while picketing has an ingredient of communication it cannot dogmatically be equated with the constitutionally protected freedom of speech. Our decisions reflect that picketing is 'indeed a hybrid.' . . . The effort in the cases has been to strike a balance between the con-

14. See *Hughes v. Superior Court of California*, 339 U.S. 460 (1950), where a state's regulatory control over picketing was delineated as follows:

The policy of a State may rely for the common good on the free play of conflicting interest and leave conduct unregulated. Contrariwise, a State may deem it wiser policy to regulate. Regulation may take the form of legislation, *e.g.*, restraint of trade statutes, or be left to the *ad hoc* judicial process, *e.g.*, common law mode dealing with restraints of trade. Either method may outlaw an end not in the public interest or merely address itself to the obvious means toward such end. *The form the regulation should take and its scope are surely matters of policy and, as such, within a State's choice.* *Id.* at 468 (emphasis added).

15. *Teamsters, Local 309 v. Hanke*, 339 U.S. 470 (1950).

stitutional protection of the element of communication in picketing and 'the power of the State to set the limits of permissible contest open to industrial combatants.' *Thornhill v. Alabama*, 310 U.S. 88, 104. A State's judgment on striking such a balance is of course subject to the limitations of the Fourteenth Amendment. Embracing as such a judgment does, however, a State's social and economic policies, which in turn depend on knowledge and appraisal of local social and economic factors, *such judgment on these matters comes to this Court bearing a weighty title of respect.*

Id. at 474-75 (emphasis added). See also *Giboney v. Empire Storage Co.*, 336 U.S. 490, 498-500 (1949).

Teamsters, Local 695 v. Vogt, Inc., 354 U.S. 284 (1957), culminated the Court's decisions in this area. *Vogt* was described by the Court as "one more in a long series of cases in which this Court has been required to consider the limits imposed by the Fourteenth Amendment on the power of a state to enjoin picketing." *Id.* at 285. The Court concluded that this "long series of cases":

[E]stablished a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy.

Id. at 293. Encouragement of the effectuation of state policy in regulation of picketing announced in *Vogt* has caused this Court to "emphatically reject the notion" that the Constitution offers the same type of protection to picketing as it does to communication of ideas by pure

speech¹⁶ and to conclude that "it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."¹⁷

Application of the principles governing regulation of conduct involved in picketing to the specific paragraphs of Article 5154(d) declared unconstitutional reveals that the statute does not contravene constitutional guidelines. The authority of a state to establish limits on the number of individuals allowed to engage in picketing has never been questioned—the sole function of paragraph 1 of Article 5154(d) limiting picketing to not more than two pickets within 50 feet of entrances. The opinion in *Thornhill* expressly recognized the right to limit the number of persons allowed to engage in picketing.¹⁸ At various times, this Court's decisions have alluded to the permissibility of

16. *Cox v. Louisiana*, 379 U.S. 536, 555 (1965).

17. *Id.* at 555, quoting from *Giboney v. Empire Storage Co.*, *supra*. It is interesting to note that two leading exponents on the Court of the position that the freedom of speech is absolute and as such the states cannot place restrictions on it have never questioned the right to regulate picketing. In concurring in the *Cox* case, Mr. Justice Black stated: "Picketing, though it may be utilized to communicate ideas, is not speech, and therefore is not of itself protected by the First Amendment." 379 U.S. at 578. Mr. Justice Douglas has stated:

[P]icketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Hence, those aspects of picketing make it the subject of restrictive regulation.

Bakery Drivers Local v. Wohl, 315 U.S. 769, 776-77 (1942) (concurring opinion).

18. 310 U.S. at 99.

placing numerical limits on pickets, such as the following statement contained in the *Meadowmoor* case: "[Peaceful picketing] may, if actually necessary, be limited . . . to two or three individuals at a time and their manner of expressing their views may be reasonably restricted to an orderly presentation."¹⁹

In order to hold the picketing limitation in the Texas statute unconstitutional, however, the district court deemed it necessary only to "compare this statute with a Louisiana Municipal Ordinance found unconstitutional by the . . . Fifth Circuit in . . . *Davis v. Francois*, 395 F.2d 730 (5th Cir. 1968)".²⁰ The ordinance in the *Davis* case allowed only two pickets to be present at any time at the entire premises subject to picketing. The Fifth Circuit determined that the ordinance unduly restricted the right to protest because of the limitation of two pickets. The court below deemed the Texas statute a "mathematical straightjacket," and thus held it unconstitutional under mandate of the Fifth Circuit in *Davis*.

This mechanical application of the holding in *Davis* to the limitation of pickets contained in Article 5154(d)

19. *Milk Wagon Drivers Union, Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 319 (1941) (Reed, J., dissenting). The dissent by Mr. Justice Reed in *Meadowmoor* was prompted by the Court's allowance of total prohibition of peaceful picketing in a labor dispute. In *Carpenters Union v. Ritter's Cafe*, 315 U.S. 722 (1942), Mr. Justice Reed again dissented from the majority opinion, which approved total prohibition of peaceful picketing. This dissent, however, recognized the right of the state to:

[I]mpose not only some but many restrictions upon peaceful picketing, reasonable numbers, quietness, truthful placards, open ingress and egress, suitable laws or other proper limitation, not destructive of the right to tell of labor difficulties, may be required. *Id.* at 738-39.

20. 347 F. Supp. at 624.

demonstrates the failure of the court below to perceive the true effect of the statute and illustrates the intrinsic flaw in its logic. There is a vast difference between the statutes—the Louisiana ordinance limits the number of pickets to two, while the Texas statute is a statutory regulation of labor disputes which allows two pickets at each entrance to the picketed premises and others properly spaced around the premises.²¹ That the State of Texas struck the proper balance in preserving the public welfare in limiting the number of individuals allowed to picket in labor disputes was recognized by this Court long ago when, in delineating the purpose to be achieved by state legislation regulating picketing, the Court stated that, “The purpose should be to prevent the inevitable intimidation of presence of groups of pickets, but to allow missionaries.”²² There is no better vehicle for the effectuation of such purpose than the specific number and distance limitations on picketing contained in Article 5154(d).²³

21. The practical difference can be seen by reference to the facts in the Amicus Curiae Brief filed by Farah Manufacturing Company herein. The facts in the *Farah* case, now pending before this Court on a petition for writ of certiorari, reveal that 100 individuals, properly spaced, are able to picket a company facility without violating the numbers and distance requirements in Article 5154(d). Under the Louisiana ordinance, however, only two individuals would be allowed to picket, instead of the 100 allowed by the Texas statute. Brief for Farah Manufacturing Company as Amicus Curiae at 4 n. 2. The constitutionality of Article 5154(d) is also involved in the *Farah* case.

22. *American Steel Foundries v. Tri-City Trades Council*, 257 U.S. 184, 207 (1921).

23. Professor Jerre Williams, in an analysis of the Texas mass picketing statute, concluded that the limitation on pickets is constitutionally proper:

The Texas law with respect to picketing as free speech, it has been shown, is a close parallel to the law established by the federal decisions. . . . The Texas mass picketing statute limiting

Just as there is no question concerning the constitutional validity of the two-picket limitation in the statute, there has never been any question that a state may prevent picketing or any other conduct that obstructs entrances to picketed premises. This is the necessary effect of the provision requiring free ingress and egress contained in paragraph 2 of Article 5154(d). The plain language of the statute defines mass picketing as actual physical obstruction of entrances.²⁴ Yet, the court below struck down this part of the statute on the ground that it prevents "any character" of obstruction to free ingress or egress and as such is void for overbreadth.²⁵

In *Cameron v. Johnson*, 390 U.S. 611 (1968), this Court determined that a Mississippi statute was not over-

the number of pickets at each entrance of the establishment being picketed to two, has not been challenged in the courts. Nor has any similar statute of any other jurisdiction been challenged in the United States Supreme Court. However, the United States Supreme Court cases, starting with *Thornhill v. Alabama*, have recognized the right to limit the number of pickets. This seems to follow logically from the free speech pattern. By using a large number of pickets at any one entrance a union is accomplishing its objective through the coercion of numbers, the threat of physical force. Limiting the number of pickets so that the persons to be persuaded will not be threatened by the force of numbers but will be persuaded by the fact that the establishment is being picketed seems to be a perfectly proper and constitutional legislative control.

Williams, *Picketing and Free Speech—A Texas Primer*, 30 Texas L. Rev. 206, 226 (1951) (footnotes omitted).

24. Under the statute, mass picketing is deemed to exist where: Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, *either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions*. (Emphasis added.)

25. 347 F. Supp. at 625.

broad which prohibited picketing in such a manner "as to obstruct or unreasonably interfere with free ingress or egress to and from any public premises. . . ." Prohibition of this type of conduct—the obstruction or unreasonable interference with ingress or egress—was held not to abridge any constitutional liberty.²⁶

The District Court attempted to distinguish the present case from *Cameron* on the ground that the statute in *Cameron* prohibited *only* "unreasonable obstructions," while the Texas statute prohibits "any character" of obstruction to free ingress or egress.²⁷ The court thus suggests that pickets have a right to obstruct in a reasonable manner ingress and egress, which is certainly a novel constitutional doctrine. In any event, such a distinction between *Cameron* and the present case is illusory since the statute in *Cameron* prohibited conduct which obstructs *or* unreasonably interferes with ingress or egress, thus prohibiting *any* obstruction of entrances, instead of "unreasonable" obstruction. Similarly, the Texas statute prevents actual physical obstruction of entrances and thus is constitutional under the mandate of *Cameron*.

Added to the plain wording of the statute and the opinion in the *Cameron* case is the fact that the courts of the State of Texas have interpreted the second paragraph of Article 5154(d) to prohibit only physical obstructions of entrances—"a ruling on a question of state law that is as binding on [the Court] as though the precise words had been written into the ordinance."²⁸

26. 390 U.S. at 617.

27. 347 F. Supp. at 625.

28. *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

In *Geissler v. Coussoulis*, 424 S.W.2d 709 (Tex. Civ. App.—San Antonio 1967, writ ref'd n.r.e.), the court interpreted this section of the statute as prohibiting only the physical obstruction of ingress and egress. *Coussoulis* involved a strike in a city along the border of Texas and Mexico. The trial court enjoined the displaying of a red and black flag used in Mexico to signify that a strike is in progress. The trial court found that the display of the banner created an "obstacle to the free ingress and egress of plaintiff's business in violation of Sec. 1(2) of Article 5154(d)." *Id.* at 713. The appellate court, however, refused to sanction this holding because:

The simple answer to this is that the statutory provision on which plaintiffs rely clearly *relates only to physical obstructions*. The statute talks solely in terms of an 'obstacle' formed by the person of the picket or by a vehicle or other 'physical' obstruction. One of the basic purposes of maintaining a picket line is to deter those sympathetic to the strikers' cause from dealing with the employer. If the picket line has the desired effect, there will be created in the minds of potential customers a disinclination to enter the strike-bound premises. If this psychological effect of a picket line is sufficient to brand it illegal as mass picketing, then the result of the statutory language is to prohibit all successful picketing. Such an interpretation would render the statute unconstitutional.

Id. at 714 (emphasis added).

Thus, under the authoritative construction of the Texas court limiting the operation of the statute to actual physical obstruction of ingress and egress and the mandate of this Court in *Cameron*, the provision of Article 5154(d) requiring open ingress and egress is a valid exercise of the police power of the State of Texas.

CONCLUSION

The decision of the three-judge court is a classic example of unwarranted invalidation of the authority of a state to impose reasonable regulations for the protection of the community as a whole. This fact is demonstrated by the failure of the court to exercise the required judicial restraint in deciding complex constitutional issues and the court's erroneous conclusion concerning the constitutionality of Article 5154(d). For these reasons, the *amici curiae* respectfully request this Court to vacate the district court's opinion declaring unconstitutional Section 1 of Article 5154(d).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of May, 1973, one copy of the foregoing Brief Amicus Curiae was mailed, postage prepaid, to the following:

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APPENDIX A

Mr. John B. Abercrombie
BAKER & BOTTS
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Houston, Texas 77002

Dear Mr. Abercrombie:

This is in response to your letter dated April 11, 1973, requesting my consent to your filing a brief *amicus curiae* in the case of A. Y. Allee, et al., v. Francisco Medrano, et al., No. 72-1125, now pending in The Supreme Court of The United States. As attorneys for Dixie, Wolf & Hall, I hereby give such consent.

Very truly yours,

/s/ CHRIS DIXIE

THE ATTORNEY GENERAL
OF TEXAS

Austin, Texas 78711

(Seal of State of Texas)

John L. Hill
Attorney General

April 11, 1973

Mr. John B. Abercrombie
Baker & Botts
3001 Shell Plaza
Houston, Texas 77002

Re: Allee, et al v. Medrano, et al
No. 72-1125

Dear Mr. Abercrombie:

This is to confirm our telephone conversation of April 11, 1973, where I advised you that I was authorized to state to you that this office has granted consent to Brown & Root, et al to file a brief, as amicus curiae, in the above styled case.

Very truly yours,

/s/ GILBERT J. PENA
Assistant Attorney General

GJP:pa

cc: Mr. Chris Dixie
Dixie, Wolf & Hall
609 Fannin Street Building
Suite 401
Houston, Texas 77002

Mr. John B. Abercrombie
BAKER & BOTTS
3000 One Shell Plaza
Houston, Texas 77002

Dear Mr. Abercrombie:

This is in response to your letter dated April 11, 1973, requesting my consent to your filing a brief *amicus curiae* in the case of A. Y. Allee, et al., v. Francisco Medrano, et al., No. 72-1125, now pending in The Supreme Court of The United States. As attorneys for Jim Rochester, I hereby give such consent.

Very truly yours,

/s/ GARY GURWITZ

Atlas, Hall, Schwarz, Mills,
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P. O. Drawer 1870
McAllen, Texas 78501

Mr. John B. Abercrombie
BAKER & BOTTS
3000 One Shell Plaza
Houston, Texas 77002

Dear Mr. Abercrombie:

This is in response to your letter dated April 11, 1973, requesting my consent to your filing a brief *amicus curiae* in the case of A. Y. Allee, et al., v. Francisco Medrano, et al., No. 72-1125, now pending in The Supreme Court of The United States. As attorneys for Dr. Rene Solis, Raul Pena, Roberto Pena and B. S. Lopez, I hereby give such consent.

Very truly yours,

/s/ LUTHER E. JONES, JR.
338 Laurel Drive
Corpus Christi, Texas 78404

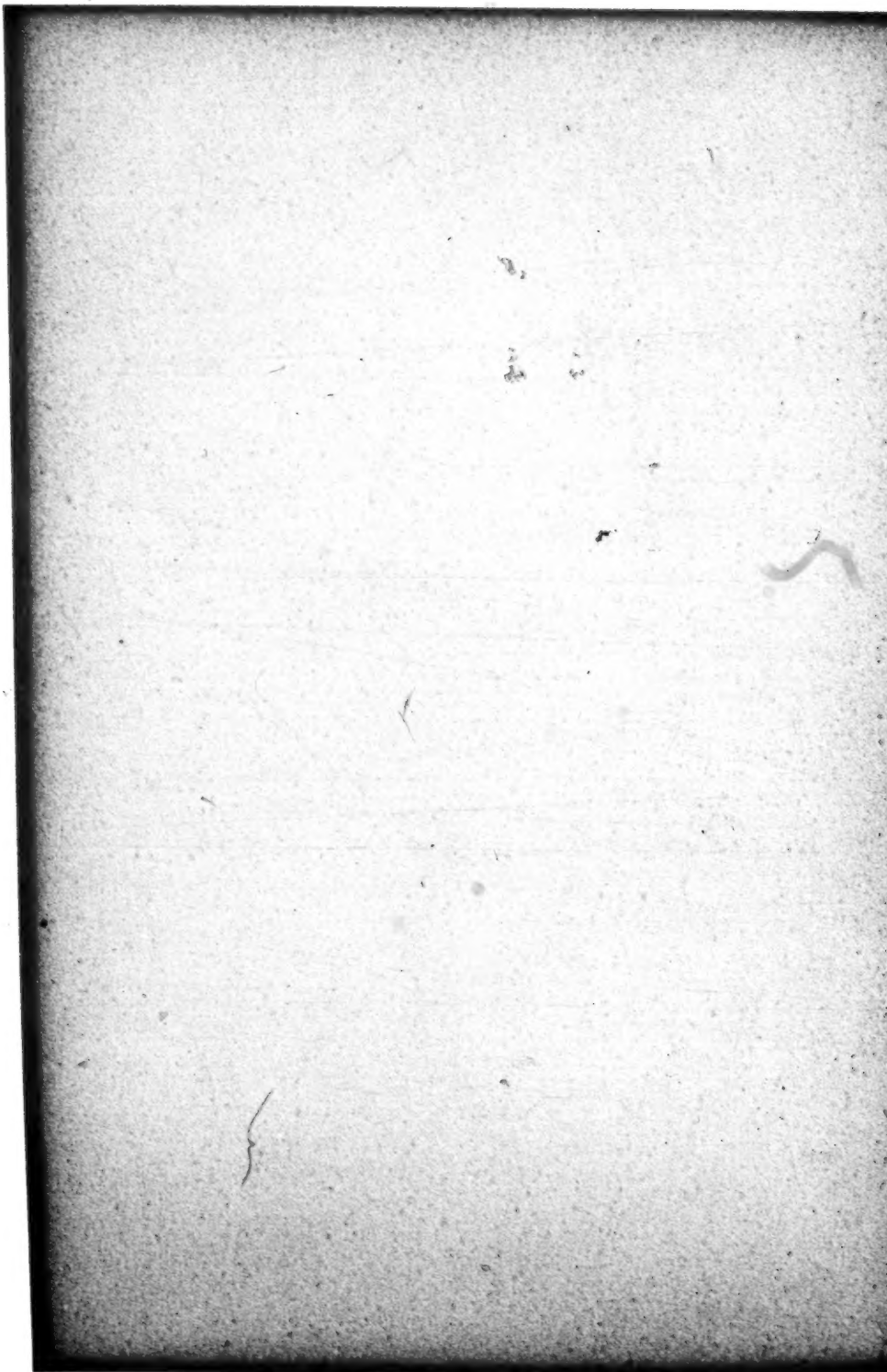
Mr. John B. Abercrombie
 *BAKER & BOTTS
 3000 One Shell Plaza
 Houston, Texas 77002

Dear Mr. Abercrombie:

This is in response to your letter dated April 11, 1973, requesting my consent to your filing a brief *amicus curiae* in the case of A. Y. Allee, et al., v. Francisco Medrano, et al., No. 72-1125, now pending in The Supreme Court of The United States. As attorneys for Star County officials, I hereby give such consent.

Very truly yours,

/s/ FRANK R. NYE, JR.



SUPREME COURT OF THE UNITED STATES

October Term, 1972

NO. 72-1125

A. Y. ALLEE, ET AL,

Appellants

v.

FRANCISCO MEDRANO, ET AL,

Appellees

ON DIRECT APPEAL FROM THE UNITED
STATES THREE-JUDGE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF FOR THE APPELLANTS

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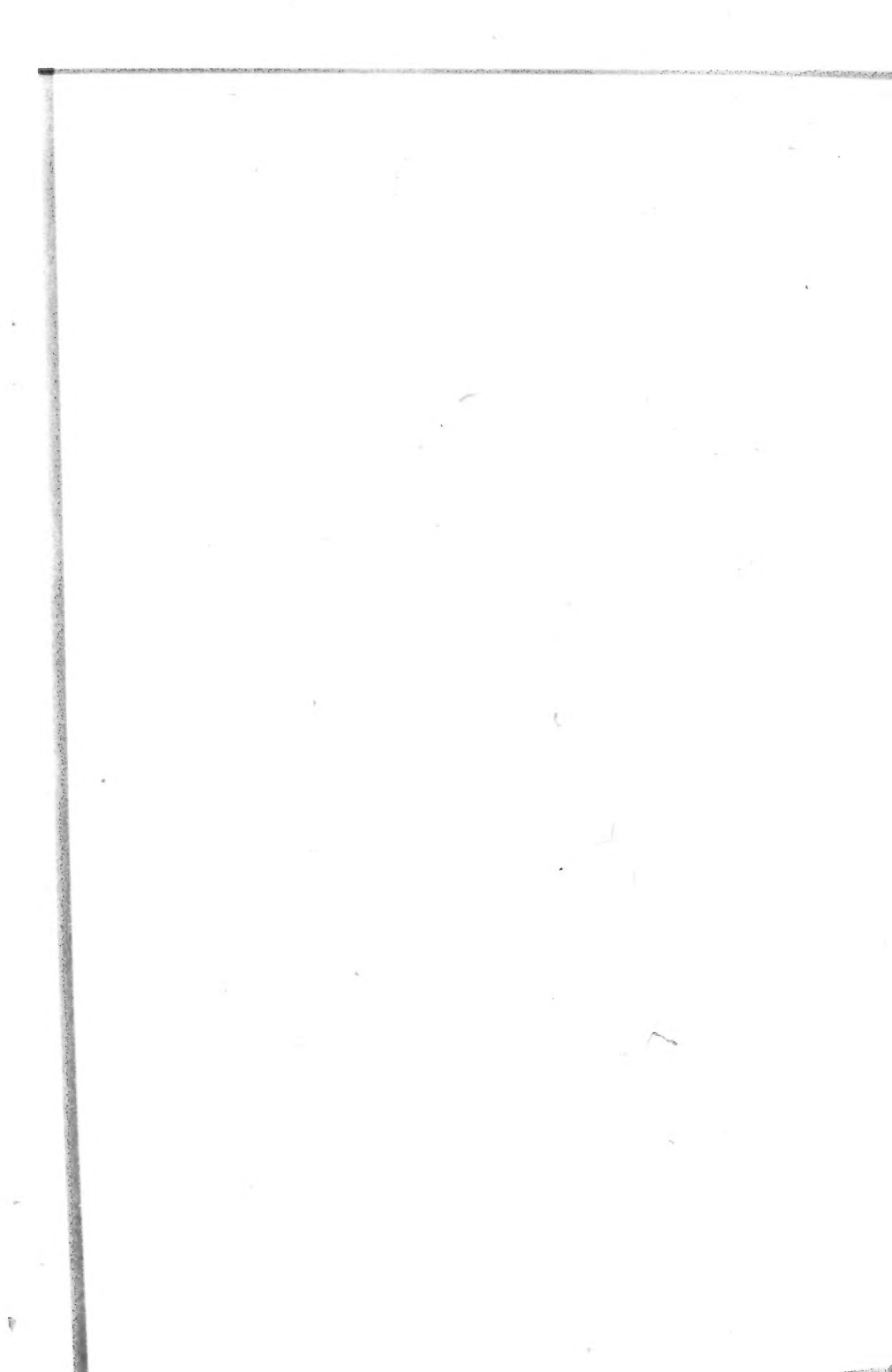
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1972

NO. 72-1125

A. Y. ALLEE, ET AL,

Appellants

v.

FRANCISCO MEDRANO, ET AL,

Appellees

ON DIRECT APPEAL FROM THE UNITED
STATES THREE-JUDGE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF FOR THE APPELLANTS

OPINION BELOW

The opinion of the Three-Judge Court for the Southern District of Texas is reported at 347 F.Supp. 605 (1972). A copy of said opinion is printed in the Jurisdictional Statement filed by Appellant at page 33.

JURISDICTION

This suit was brought under the provisions of Title 28, United States Code, Sections 1343, 2201, 2202, 2281 and 2285 and Title 42, United States Code, Sections 1983 and 1985; and the First and Fourteenth Amendments to the Constitution of the United States in the United States District Court for the Southern District of Texas, seeking declaratory and injunctive relief in an attack on the constitutionality of certain state statutes, and an injunction was sought restraining the officers and officials from enforcing these statutes against Appellees and their class. The complaint also alleged that the Appellants, as state officials acting under color of state law, conspired and deprived Appellees of their civil rights, privileges and immunities protected by the laws and Constitution of the United States. A Three-Judge District Court was formed to hear this cause as provided for by 28 U.S.C. Section 2284. Final judgment of the Court was entered on December 4, 1972, which judgment held that part of Article 5154d of Vernon's Civil Statutes of the State of Texas and part of Article 5154f of Vernon's Civil Statutes of the State of Texas and portions of Articles 474, 482, and 439 of the Texas Penal Code were unconstitutional and granted an injunction against its enforcement by state officers, their successors, agents and employees. Notice of Appeal was mailed to that Court on December 18, 1972.

The jurisdiction of the Supreme Court to review the decision of the Three-Judge Court is conferred by 28 U.S.C. Sections 1253, 2101(a)(b) and 2281. The following cases sustained the jurisdiction of the Supreme Court to review the judgment of this case on direct appeal: *Florida Lime and Avacado Growers, Inc. v. Jacobson*, 362 U.S. 73 (1960); *Ness Produce Co. v. Short*, 263 F.Supp. 586 (D.C.

Or. 1966), affirmed at 385 U.S. 537 (1967). Probable jurisdiction was noted by the court on May 7, 1973.

STATUTES INVOLVED

As noted above, the Three-Judge District Court below held that part of Article 5154d of Vernon's Civil Statutes of the State of Texas and part of Article 5154f of Vernon's Civil Statutes of the State of Texas, and portions of Articles 474, 482, and 439 of the Texas Penal Code unconstitutional and granted an injunction against its enforcement by state officers.

The court declared and adjudged that Section I of Article 5154d of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, was null and void. The said portion of the statute reads as follows:

"Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

"'Mass picketing,' as that term is used herein, shall mean any form of picketing in which:

"1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.

"2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions."

The Court declared and adjudged that Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, were null and void. The said portion of the statute reads as follows:

"Section 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

"Section 2.

* * *

"b. 'Secondary strike' shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

* * *

"d. The term 'secondary picketing' shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

"e. The term 'secondary boycott' shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damage to any person, firm or corporation for whom they are not employees, by

"(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

"(2) Picketing such person, firm or corporation; or

* * *

"(4) Instigating or formenting a strike against such person, firm or corporation; or

"(5) Interfering with or attempting to prevent the free flow of commerce; or

"(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute."

* * *

"h. The term 'labor dispute' is limited to and means any controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, the controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee members only of such union, a labor dispute within the meaning of this Act."

The Court declared and adjudged the following portion of Article 474 of the Texas Penal Code to be null and void and restrained its enforcement. Article 474 has since been amended, but it read in pertinent part at the time of the

events from which this litigation arose, as follows:

"Whoever shall go into or near any public place, or . . . near any private house, and shall use loud and vociferous, or obscene, vulgar or indecent language or swear or curse, or yell or shriek . . . in a manner calculated to disturb the person or persons present at such place or house, shall be punished by a fine not exceeding Two Hundred Dollars (\$200)."

The Court declared and adjudged that Article 482 of the Texas Penal Code was null and void. Such statutes reads as follows:

"Any person who shall in the presence of hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under the circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars."

The Court declared and adjudged that Article 439 of the Texas Penal Code was null and void. The said statute reads as follows:

"An 'unlawful assembly' is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof."

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether, as held by the court below, Section 1 of Article 5154d of Vernon's Civil Statutes of the State of Texas is unconstitutional because of impermissible broadness?

2. Whether, as held by the court below, Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas is unconstitutional because of impermissible broadness?

3. Whether, as held by the court below, Article 482 of the Texas Penal Code is unconstitutional because of impermissible broadness?

4. Whether, as held by the court below, Article 439 of the Texas Penal Code is unconstitutional because of impermissible broadness?

5. Whether the court below can properly order injunctive relief, as it did, against peace officers of the Texas Department of Public Safety and the law enforcement officials of Starr County in this case where prosecutions were pending, and whether the court improperly interpreted *Dombrowski v. Pfister*, 380 U.S. 479 (1965), *Cameron v. Johnson*, 390 U.S. 617 (1968), *Younger v. Harris*, 401 U.S. 37 (1971), and its companion cases, in reaching the conclusion that injunctive relief would lie in the present case?

STATEMENT OF THE CASE

The Valley Farm Workers Organizing Committee, AFL-CIO, instituted a strike from June, 1966 until June 1967, in an attempt to encourage the predominately Mexican-American farm workers in Starr County to join with the

union in organizing and forming a union. In pursuit of their directives, and according to union president Domingo Arredondo, the picketing occurred every day (except Sunday) until its further continuance was enjoined by the state district court. (Tr. Vol. I p. 273). In pursuit of their objectives, strikes were called; and picket lines, rallies, and demonstrations were employed to enlist non-union laborers in the common cause. By an unexplained coincidence, vandalism and destruction of property began in June of 1966 in Starr County. Sugar was poured in gas tanks, flats on tractors were caused by man-made objects, and theft of property was on the increase. (Tr. Vol. II p. 534).

The evidence in this cause does not in any manner reflect that the Appellants and other officials of the State of Texas have engaged in a massive conspiracy to deny Appellees their constitutionally protected right of free speech and to deprive them of rights, privileges, or immunities secured by the Constitution and laws of the United States. Appellees sought to dramatize some twenty or so incidents that occurred over a period of one year into an alleged plot. Because of the fear of a breakdown of the law enforcement, to a great extent because of a large number of strikers and relatively small number of law enforcement officers, Starr County officials made a strong appeal that the Texas Rangers be sent to preserve order and prevent bloodshed. (Tr. Vol. II p. 421).

It is contended and we do state that early in the summer of 1966, Deputy Sheriff Raul Pena assisted in the distribution of "La Verdad", a newspaper which was anti-union in nature. We do not attempt to excuse or explain Mr. Pena's conduct other than his statement that he was attempting to help his friend, the publisher, Mr. De La Paz. However, whether or not Pena was pro-union or

anti-union would not have any bearing on the issues of whether or not in truth and in fact Appellees were violating the laws of the State of Texas.

On October 12, 1966, Appellee Chandler was arrested and charged with violation of Penal Code, Article 474, disturbing the peace. According to Deputy Sheriff Raul Pena, a complaint had been received from one of the crew leaders to the effect that pickets had been bothering them and calling them names in the field. Pickets were using a loud speaker system and using foul language addressed to the workers in the field. (Tr. Vol. III p. 596). Pena ordered the strikers to disperse. Appellee Chandler refused to leave and charges of disturbing the peace were filed against him. (Tr. Vol. IV p. 595).

On October 24, 1966, union president Domingo Arredondo and others were arrested for obstructing the International Bridge by sitting down and locking arms across the bridge to prevent all traffic from going back and forth across the international boundary. (Tr. Vol. I. p. 284). At the courthouse Domingo Arredondo and those arrested were screaming and hollering in the courthouse until Deputy Sheriff Ellert told them to stop hollering in the courthouse. At that moment Domingo Arredondo jumped close to the deputy's ear and hollered as loud as he could "viva la huelga". At that moment the deputy shoved Arredondo back against the wall and reached for his gun although he did not pull out his gun. (Tr. Vol. III p. 690).

It is difficult to imagine law enforcement officers not having the authority to control persons under arrest. Deputy Ellert denies striking Arredondo. His version of the incident reflects Arredondo clearly could have been charged with violation of Article 474 V.A.P.C., disturbing

the peace, for yelling in the courthouse. It was not what he said, but the manner in which he said it.

On November 7, 1966, twenty or twenty-five persons were blocking the entrance to La Casita Farms, (Tr. Vol. II p. 519). Jim Rochester, foreman of La Casita Farms, got a radio call on the early hours of November 7, 1966, that there was trouble at the gate of La Casita Farms and he went to the gate and upon his arrival he saw a group of people blocking the entrance to the farm. Several buses full of workers were trying to get into the farm but were unable to do so because the union people were blocking the entrance. Rochester got in one of the buses and told the people to move out of the way as he was going to drive the bus through the gate. It was at this time that Magdaleno Dimas, a union leader, hollered "you son-of-a-bitch, you are not going to do that," and jumped up into the bus door. Dimas was forced to jump out of the bus and hollered back at Rochester "you son-of-a-bitch, I'll get you". (Tr. Vol. II p. 521). Rochester then drove the bus through the gate. Rochester was well aware of Dimas' reputation for violence and considered this threat to be of a serious nature. (Tr. Vol. II p. 522).

On November 28, 1966, Appellees and other union members and sympathizers held a rally on the grounds of the Starr County Courthouse. They placed the union strike flag to fly from the flag pole normally occupied by the flag of the United States of America. No attempt was made to obtain permission from the Sheriff's Office to use the courthouse or to hang union flags from the courthouse windows. No attempt was made by Appellees to secure permission from the county officials for use of such public property. In fact the activities of the Appellees indicate that they were attempting to intimidate the Starr County

officials and to run matters as they pleased. This instance reflects a total disregard for the public officials of Starr County as well as its public buildings. (Tr. Vol. III p. 598).

On December 28, 1966, members of the union were picketing at the entrance to La Casita Farms. Librado de la Cruz, a union member, struck and grabbed Manuel Balli as he was attempting to enter the main gate of La Casita Farms. Deputy Sheriff Roberto Pena attempted to arrest Librado de la Cruz for assault, but the crowd ganged up around him and grabbed Deputy Pena and would not let him go. Finally an agreement was made and Librado de la Cruz drove his pickup to the Sheriff's Office. (Tr. Vol III p. 666). Charges could have been leveled against those present for unlawful assembly, Penal Code violations, Article 439 and 449; for rioting; Articles 455, 457, 464; for mass picketing under Article 5154d, Vernon's Civil Statutes. It might be well to point out to the Court that Article 5154d also prohibits the interfering with ingress and egress.

On January 26, 1967, five members of the union using a loud speaker were soliciting employees of the Trophy Farms to join the union. The five union sympathizers were calling Augustine Lopez and Fredrico Pena and other workers by using "the foulest words known to that language in this area". Both Augustine Lopez and Fredrico Pena signed complaints. (Tr. Vol. I p. 78).

On January 26, 1967, five members of the union were arrested for using obscene language directed at workers at Trophy Farms. These five union members were placed in jail and other union members gathered around outside the jail in an evident attempt to intimidate the local law enforcement officials. This harassment by the union

members was done under the guise of holding a "prayer meeting" at the jail. The union members were talking back and forth to the prisoners in the jail on the third floor of the courthouse and Deputy Sheriff Raul Pena ordered them to disperse. This was in keeping with the requirements of Article 472 of the Texas Penal Code that a peace officer should order persons present at an unlawful assembly to disperse. Deputy Sheriff Pena said that he asked them what they were doing there to which they replied "we are praying, you son-of-a-bitch". (Tr. Vol. III p. 604). He then ordered them to disperse which they did with the exception of Padilla and Drake. Since they refused to leave they were placed under arrest. In any event, a gathering at the jail after hours and unauthorized contact with the prisoners by large group of noisy people could certainly legally be dispersed.

On February 1, 1967, union member Orendain and three other union members, together with two Catholic priests, Father Smith and Father Killion gathered together on La Casita property and called fifty or sixty workers who were in La Casita fields "scabs" in spanish in attempting to use a word that had "punch to it and an edge to it". They were arrested for disturbing the peace. (Tr. Vol. II p. 503, Vol. IV p. 771).

On May 11, 1967, union member Ismael Diaz and others were on their way to the Roma International bridge to picket. The automobile driven by the union members was stopped for traffic violations. In addition to driving without a license, Diaz was speeding up and passing the buses carrying the farm workers, and then slowing it down so that the bus could not proceed. He was, in fact, obstructing a public road. In this connection, he and all the persons in the automobile could have been arrested for

participating in this activity. (Tr. Vol. IV p. 901-905).

After leaving the Roma International bridge the union sympathizers went to the Rio Grande City International Bridge which consists of only two lanes, one lane entering the bridge and the other leaving. There is not enough room to stand in the road without blocking traffic. According to the testimony of the Rangers, union members were unlawfully assembled at the bridge in violation of Articles 439 and 449, attempting to stop traffic, but moved back when ordered to do so and no charges were filed. (Tr. Vol. IV. p 905-908).

On May 12, 1967, Eugene Nelson, a union leader went to the Sheriff's Office for the express purpose of intimidating the Rangers and other law enforcement officers. He asked to see that "son-of-a-bitch, Captain Allee" and then stated "you tell that son-of-a-bitch that get man off my man because there's going to be some rangers killed". (Tr. Vol. III p. 674). Both Constable Benavides and Deputy Sheriff Ellert verified the fact that Nelson did make that threat. (Tr. Vol. III p. 691). This was another example of the strikers trying to intimidate law enforcement officers either by force of numbers or by threats; however, the Texas Rangers refused to be intimidated.

On May 17, 1967, Juan Vela was driving a truck load of workers into a Trophy Farm when he was stopped by picketers at the gate. After talking to the picketers they told him it would be all right to go on in that day, but not to come back the next day because they would not let him in. (Tr. Vol. II p. 476). On the 18th they would not allow him or his crew to enter. There were obscenities used against him and his crew. Onas Brand, the farm manager of the Trophy Farms, filed a complaint and the Texas

Rangers made the arrests. Captain Allee said that pickets were bunched up together and interfering with traffic and interfering with free ingress and egress to Trophy Farm. (See Answer to Plaintiffs' Interrogatory No. 70).

The picketing was accompanied by destruction of property of the Missouri Pacific Railroad. Although not a party to this feud, the Missouri Pacific Railroad Company suffered partial destruction of a bridge by arson, found that objects had been placed on railroad tracks which could derail trains, had rocks thrown at trains, and other incidents which endangered the operation of the railroad to such an extent that they found it necessary to keep a number of special agents on hand to attempt to protect railroad property and in addition to ask assistance from the Texas Rangers in order to secure the safety of their trains. (Tr. Vol. III p. 695-696).

On May 26, 1967, fourteen union sympathizers were arrested in two groups at Mission, Texas. Mission, Texas, is in another county approximately forty miles from the scene of the other disruptions. The union members attempted to picket and interfere with the operation of the Missouri Pacific Railroad.

The record reflects that because of various acts of sabotage, Rangers were riding the trains from Rio Grande City and that on occasions, a Ranger even accompanied a railroad special agent ahead of the train on a small motor car to see that there were no obstructions on the track which might derail the train. (Tr. Vol. IV p. 809).

On May 26, 1967, the union planned to disrupt traffic on the Missouri Pacific Railroads with the intent that none of the produce being shipped from the Starr County area

would be allowed to reach the market. This activity was directed against the Missouri Pacific Railroad and one of the main points of assembly was at Mission, Texas. The Press had notice of the planned activity and were present. Captain Allee stated that the picketers were standing on the track itself so that the locomotive would have had to run over them if they hadn't moved. (Tr. Vol. IV p. 811).

Members of the union were blocking railroad tracks. Some of the pickets had signs and some were without signs. A large crowd of spectators had gathered. Arrests were made by Texas Rangers at the request of railroad special agents. (Tr. Vol. IV p. 815-895).

The purpose of the blocking of the Missouri Pacific train was to keep the crew members from carrying on their occupation or employment by refusing to let them operate the train.

On May 31, 1967, there were pickets gathering on the road by the Solis' property at La Casita Farm. Pickets were using a loud speaker and calling the workers "son-of-a-bitch", and "mother-f_____". The testimony is uncontroverted that the workers in the fields had knives and the situation was very explosive. Pickets were placed under arrest and charged with violation of Article 5154d. (Tr. Vol. IV p. 799). It might likewise be pointed out that this statute in addition to being a mass picketing statute also contains a section prohibiting insults and abuse, or obscene or threatening language. In addition on this occasion, participants could have been charged with violation of Articles 439, 449, unlawful assembly; Article 474, disturbing the peace; and Article 42, abusive language; Articles 455, 464, or 466 or the rioting statute.

On June 1, 1967, Magdaleno Dimas was seen on more than one occasion in the vicinity of La Casita packing shed with a .22 rifle. He had previously threatened "to get" Jim Rochester, the manager of La Casita Farm, who was at the shed. Rochester was apparently terrified because of the reputation that Dimas had had for violence and demanded police protection. He threatened to call Washington if he could not get some relief from local state officers. (Tr. Vol. II p. 526).

Dimas was a known murderer, had cut a boy's throat from one ear to another "for the fun of it" and spent the year in jail for aggravated assault. He was accompanied by Benito Rodriquez, who also had a long police record, and was known by the officers to have committed crimes of violence. (Tr. Vol. IV p. 825). The Rangers attempted to obtain some assistance from the union in locating Dimas, but Chandler and Alex Moreno refused to help, pretending that they did not know the whereabouts of Dimas. The Rangers left, waited down the street, and Chandler led them directly to the hideout being used by Dimas. The evidence is uncontradicted that when Dimas came outside with Chandler he was still armed with a rifle, and Chandler, when the Rangers turned on their car lights, yelled to Dimas to throw his gun down. Dimas then ran back into the house. (Tr. Vol. IV p. 823). There is no denial that he is guilty of the crime with which he was charged. Benito Rodriquez was also guilty as a principal in accompanying Dimas in threatening and intimidating Jim Rochester, the manager of La Casita Farms. Dimas was a man of violence.

In making the arrests, Captain Allee admits hitting Dimas over the head with a shotgun. It might be observed that a less experienced officer would probably have shot

both Dimas and Rodriquez when Captain Allee found them inside the house with their hands under a table. (Tr. Vol. IV p. 827-828).

An examination of the above described incidents which form the basis of the complaint filed by Appellees reflect that the law enforcement officers and county officials have acted in good faith and in great moderation and restraint. Arrests occurred only when there was flagrant violations of the law, usually based on complaints made by the farm owners and in most instances, a lesser offense was charged, although the activities of the Appellees would have warranted more serious charges being filed. If more appropriate charges should have been filed under other statutes, we present that it was a mistake of judgment and not coupled with any intent to destroy the union. In any event, it is important to note that the Appellees flagrantly violated the laws of the State of Texas on many, many occasions. The officials involved, as well as the Texas Rangers, were sworn to uphold the law as a part of their official duties.

SUMMARY OF THE ARGUMENT

The court below incorrectly found that Article 5154d of Vernon's Civil Statutes of the State of Texas (prohibiting "mass picketing"), Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas, (prohibiting "secondary picketing", "secondary strikes", and "secondary boycotts"), as well as Articles 439, 474, 482, and 784 of the Texas Penal Code were unconstitutional for overbreadth under the First and Fourteenth Amendments of the Constitution of the United States.

The statutes involved in no way prohibit or restrict

freedom of speech or petition. The statutes involved seek to regulate conduct utilized to further the ends of speech and expression.

Appellants submit that injunctive relief was not proper under the facts and circumstances as appear herein. It should not be presumed that the state courts will not accord Appellees their full federal and state constitutional rights in state court trials. It must be presumed that the state courts will construe the various state statutes involved and apply them with keeping with constitutional principles, and the court below should have assumed that the state courts would do so properly.

ARGUMENT AND AUTHORITIES

ARTICLE 5154d, SECTION 1 OF THE REVISED CIVIL STATUTES OF TEXAS, DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The State of Texas, through the Legislature, has enacted statutes regulating labor. These are grouped together in Title 83 of the Texas Civil Statutes, entitled Labor. Chapter Two of that title contains provisions relating to Labor Organizations, and sets forth their rights and privileges, and limitations upon the activities they may lawfully pursue. It is in this scheme of regulation of labor organizations that the challenged mass picketing statute, Article 5154d, Section 1, Vernon's Annotated Civil Statutes, is to be found. That statute is an exercise of the State's legitimate interest in regulating labor disputes, and must be examined in light of that fact. Nothing could confuse the issue more than to approach this statute with

the misconception that it applies to so-called "public-issue picketing."

Section 1 of Article 5154d prohibits "mass picketing" as therein defined. It further provides:

"The term 'picket', as used in this Act, shall include any person *stationed by or acting for and in behalf of any organization* for the purpose of . . ."

It is clear from the context of this statute in the chapter on Labor Organizations, and from the other statutes of that chapter, that the words "any organization" refer to labor organizations. Just as other statutes in that chapter regulate labor organizations (see, e.g. Article 5154d, V.A.C.S.), the challenged provision is simply an additional exercise of the State's authority to regulate labor organizations. It is certainly no violation of the Fourteenth Amendment's Equal Protection Clause to enact statutes in pursuit of this legitimate legislative purpose. The fact that statutes regulating labor organizations do not address picketing by civil rights organizations or student organizations or consumer organizations is no more a denial of equal protection than the fact that statutes or regulations governing television advertising do not govern magazine advertising, or that statutes or regulations governing the advertising of tobacco products do not govern advertising of alcoholic beverages. Equal Protection does not require that all regulation be prescribed in the most general of terms: such a requirement would create a force in direct opposition to the due process requirements that laws avoid vagueness and overbreadth. What could be more vague and broad than the prohibition of misleading labelling and advertising, and yet what could be narrower in application and subject to false claims of denial of equal protection

than specific regulations thereunder applicable only to one of several closely related industries or products. The challenged statute is part of a system of regulation of labor organizations, and the prohibition of mass picketing by such organizations is the regulation of their conduct fully within the police power of the State to regulate labor organizations. That this statute regulating labor organizations does not address mass picketing by others is clearly not a denial of equal protection.

ARTICLE 5154d, SECTION 1, OF THE REVISED CIVIL STATUTES OF TEXAS, IS NOT UNCONSTITUTIONAL BECAUSE OF IMPERMISSIBLE BROADNESS.

Article 5154d, Section 1, prohibits mass picketing as a practice available to labor organizations, and defines mass picketing as follows:

“ ‘Mass picketing’, as that term is used herein, shall mean any form of picketing in which:

1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.

2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions.”

Article 5154d prohibits “mass” picketing. It was designed to prevent the massing of pickets and the regulation

of picketing activities without prohibiting them. Pickets were prevented from physically obstructing ingress and egress to any premises, but were allowed to have sufficient number, in the opinion of the Legislature, to convey the message that the premises in question were being picketed and the reasons for the dispute.

The State has long been recognized to have the right to regulate picketing but not to prohibit it. See *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736; *Building Service Employees International Union Local 262 v. Gazzam*, 339 U.S. 532, 70 S.Ct. 784; *Gibony v. Empire Storage and Ice Co.*, 336 U.S. 490, 69 S.Ct. 684; *Bakery and Pastry Drivers and Helpers Local 802 v. Wohl*, 315 U.S. 769, 62 S.Ct. 816; *Carpenters and Joiners Union, Etc. v. Ritters Cafe*, 315 U.S. 722, 62 S.Ct. 807; *Milkwagon Drivers Union, etc. v. Meadowmoore Dairies*, 312 U.S. 61 S.Ct. 552; *International Union of Operating Engineers v. Cox*, 219 S.W.2d 787 and *Geissler v. Coussoulis*, 424 S.W.2d 709. Constitutional guarantees of freedom of speech do not grant an unabridged license to engage in any type activity because a part of such activity is a dissemination of ideas. Mr. Justice Black stated in *Gibony, et al v. Empire Storage and Ice Company*, supra, page 502:

“But it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.”

The court below held each of these two definitions of mass picketing unconstitutionally overbroad. Appellants assert that that court erred and that neither definition is unconstitutional. The court below began its analysis of this

statute on the wrong foot when it declared that this statute regulated "public issue picketing", when in truth it regulates labor organization conduct, as demonstrated above.

The district court then proceeded to dispense with the first definition of mass picketing by comparison with the Louisiana Municipal Ordinance held unconstitutional in *Davis v. Francois*, 395 F.2d 731 (5th Cir. 1968). That case and ordinance are clearly distinguishable from the instant case and statute. As the Fifth Circuit noted in its opinion, the Louisiana ordinance restricted "public issue picketing". In contrast, the Texas statute regulates the conduct of labor organizations only, as clearly demonstrated in the discussion of equal protection claims above. Contrary to the conclusion of the district court, the Texas statute strikes a permissible balance "between the constitutional protection of the element of communication in picketing and '... the limits of permissible contest open to industrial combatants.' *Thornhill v. Alabama*, 310 U.S. 88, 104." *Teamsters, Local 309 v. Hanke*, 339 U.S. 470, 475 (1950).

The so-called numbers and distance formula of Article 5154d is not unconstitutional and does not suffer the defects which made the Louisiana ordinance unconstitutional, as held in *Davis v. Francois*, supra. That Louisiana ordinance violated constitutional requirements most seriously in that "it absolutely limits the number of picketers to two regardless of the time, place or circumstances." *Davis*, supra, at 735. Unlike that ordinance, the Texas statute has a built-in adjustment formula which allows more pickets in proportion to the size of the premises being picketed and the number of entrances. The Texas formula allows pickets to march in pairs at fifty foot

intervals, and allows picketing in pairs at sufficiently spaced entrances. It is thus clear that the numbers and distance formula of Article 5154d is not an absolute straightjacket, but instead it is a true formula which permits greater or fewer pickets according to the circumstances of the particular case. This formula is based on the State's reasonable judgment balancing "the constitutional protection of the element of communication in picketing" during labor disputes, and the need to "set the limits of permissible contest open to industrial combatants," (see *Hanke*, supra).

In *Cox v. Louisiana*, 379 U.S. 559, at 564, Mr. Goldberg stated that the statute in question is:

"... a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and... the fact that free speech as intermingled with such conduct does not bring with it constitutional protection."

The Legislature of the State of Texas has the duty of protecting the public of this State against unlawful conduct and in safeguarding the tranquility of its inhabitants. In exercising its discretion in this regard, the Legislature concluded that the idea sought to be disseminated could clearly be projected by not more than two pickets located within fifty feet of any entrance of the premises being picketed or within fifty feet of each other. Unless it is the intent of pickets to intimidate, the public can be made legally aware of grievances sought to be corrected within the limits of the picketing permitted by the Statute. Courts of other states have not been reluctant to limit the number of pickets allowable. See *Rice & Holman v. United Electrical Workers*, 65 A.2d 638 (New

Jersey Superior Ct. 1949); *Standard Appliances v. Korman*, 111 N.Y.S. 2d 783, 786 (New York S.Ct. 1952); *Tarrytown Road Restaurant, Inc. v. Hotel and Restaurant Employees*, 115 N.Y.S. 2d 626, 631 (New York S.Ct. 1952); *Sternfair Corporation v. Moving Pictures Operators*, 139 N.Y.S.2d 145, 150 (New York S.Ct. 1955); *Ballas Egg Products Company, Inc. v. Meat Cutters*, 160 N.E.2d 164 (Ohio Ct.Com.Pl. 1959).

The first mass picketing definition of Section I of Article 5154d is a valid exercise of legislative discretion under its inherent police power to regulate labor disputes. We therefore contend that it is constitutional in every respect.

Turning now to the second mass picketing definition in the statute under discussion, Appellants contend that the district court erred in holding it unconstitutional, and assert that it is in all respects constitutional.

In *Cameron v. Johnson*, 390 U.S. 611 (1968), this Court upheld a Mississippi statute which prohibited picketing "in such a manner as to obstruct or unreasonably interfere with free ingress or egress..." (390 U.S. at 616). In contrast, the Texas statute only prohibits pickets which constitute an actual obstacle "either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions". The Texas statute is therefore clearly narrower in scope than the Mississippi statute, and this Court's decision in *Cameron* dictates that the Texas definition be held valid.

The district court misread the Texas statute as well as Cameron's construction of the Mississippi statutes when it attempted to distinguish the instant case from *Cameron*.

Contrary to the district court's interpretation, the Texas statute only prohibits actual physical obstruction, whereas the Mississippi statute upheld in *Cameron* prohibited not only actual obstructions, but also any unreasonable interference with free ingress or egress. Indeed, in *Geissler v. Coussoulis*, 424 S.W.2d 709 (Tex.Civ.App. San Antonio, 1967, writ ref'd n.r.e.) the court interpreted this definition of mass picketing as prohibiting only actual physical obstructions. With this state court interpretation and the clear language of the statute, this Court's opinion in *Cameron* dictates the conclusion that the second definition of mass picketing in Article 5154d, Section 1, is a valid exercise of the police power to regulate conduct in labor disputes of the State of Texas. We therefore contend that it is constitutional in every respect.

ARTICLE 5154f OF THE REVISED CIVIL STATUTES OF TEXAS IS NOT UNCONSTITUTIONAL BECAUSE OF IMPERMISSIBLE BROADNESS.

Article 5154f of the Revised Civil Statutes of Texas prohibits secondary picketing, secondary strikes, and secondary boycotts. It carefully defines the terms used in the act and specifically delineates those actions prohibited. The right of the State to adopt such policy is well settled.

This Honorable Court in *Carpenters & Joiners Union of America, et al, v. Ritter's Cafe, et al*, 315 U.S. 722, 728 (1942) stated as follows:

"In forbidding such conscription of neutrals, in the circumstances of the case before us, Texas represents the prevailing, and probably the unanimous, policy of the states. We hold that the Constitution does not forbid Texas to draw the line which has been drawn here. To hold otherwise would be to transmute vital

constitutional liberties into doctrinaire dogma. We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants.' *Thornhill v. Alabama*, 310 U.S. 88, 103-04.

"It is not for us to assess the wisdom of the policy underlying the law of Texas. Our duty is at an end when we find that the Fourteenth Amendment does not deny her the power to enact that policy into law."

In that case it was held that the Texas Anti-Trust Laws could be applied to secondary picketing. Rather than rely on the generalities of the Anti-Trust Laws the Texas Legislature spoke specifically to this problem in 1947, adopting the statute here challenged.

Although the Texas Supreme Court has held that the definition of "labor dispute" contained in the statute creates an unconstitutional restraint upon free speech and communication, it by no means has stricken the remaining portions of the statute. Indeed, that court has recognized the continued validity of Article 5154f, wherein only that portion of the definition of "labor dispute" which offends the Constitution has been stricken:

"Picketing of Wamix was not in violation of Article 5154f, V.A.T.S. Wamix states in its brief that it is undisputed that the strike was called 'for the purpose of forcing plaintiff to make wage concessions.' That

was a lawful objective and created a valid labor dispute, both as defined in Section 2, subd. h of Article 5154f and at common law. It was immaterial to the right to picket Wamix that only a minority of its employers engaged in the picketing or that those picketing had been discharged from their employment. *International Union, etc. v. Cox*, 148 Tex. 42, 219 S.W.2d 787."

Dallas General Drivers v. Wamix, 295 S.W.2d 873, 881 (1956). The above language makes it abundantly clear that the Supreme Court of Texas regards Article 5154f as a viable statute still in force, except to that extent to which the definition of "labor dispute" had been stricken.

In the earlier Texas Supreme Court decision cited in *Wamix*, that court was explicit in stating the extent to which it was striking down a portion of the statutory definition of "labor dispute". In 1949 that court held:

"As reluctant as we are to declare acts of our Legislature unconstitutional, it becomes our duty to declare invalid that portion of the statute involved which seeks to restrict a "labor dispute" to a controversy between an employer and a majority of his employees."

International Union of Operating Engineers v. Cox, 219 S.W.2d 787, 794. It is obvious that the Texas Supreme Court was invalidating only a portion of the definition of "labor dispute"; it was not striking down the entirety of Article 5154f, nor even the entirety of the statutory definition of "labor dispute". In so doing, that court was following well established rules of statutory interpretation and the mandate of Section 8 of Article 5154f, which provides:

"If any section, sentence, phrase or part of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining portions thereof; . . ."

It is the position of Appellants that Article 5154f, as interpreted by the highest State court, is a valid and constitutional exercise of "the power of the State to set the limits of permissible contest open to industrial combatants," *Thornhill v. Alabama*, 310 U.S. 88, 104.

The three-judge district court held Article 5154f unconstitutional in its analysis of the three operative concepts defined in §2, to wit: 2(d) "secondary picketing" 2(b) "secondary strike" and 2(e) "secondary boycott". We will discuss the definitions in this order, following that of the analysis of the court below.

Section 2(d) defines "secondary picketing" as "the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute . . . exists between such employer and his employees". The rationale of the court below in finding this definition overbroad is "It clearly relies on the absence of an employer-employee relationship and this is impermissible" (347 F. Supp. at 627) under the case of *American Federation of Labor v. Swing*, 312 U.S. 321 (1941). The definition of secondary picketing, however, does not turn exclusively upon the absence of an employer-employee relationship: essential to the definition in 2(d) is the definition of "picket" set forth in 2(c), and completely ignored by the district court in its analysis. Certainly it is not the absence of an employer-employee relationship wherever found that is impermissible: if so no secondary picketing prohibition could be valid. It is the reliance of a statute exclusively upon the

absence of such relationship which is impermissible. The Texas statute requires that the absence of this relationship be accompanied by the two limiting factors set forth in 2(c): the conduct be in behalf of a labor organization, and the picketing be for one of the express purposes enumerated in 2(c). With regard to the first limiting factor, see argument on the equal protection issue above.

With regard to the second limiting factor, this Court stated in *International Brotherhood of Teamsters v. Vogt*, 354 U.S. 284, 293 (1957), after reviewing the development of the law in this area:

"This series of cases, then, established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy." (Emphasis added.)

The enumerated purposes set out clearly and precisely in the 2(c) definition of "picket" are statements of public policy, the enforcement of which is sought by this statutory prohibition of secondary picketing made in full conformity with the *Vogt* doctrine announced by this Court.

The rationale of the court below in invalidating the §2(b) definition of "secondary strike" is wholly inadequate even if accepted as accurate, which it is not. On the basis of the "aid or abet" clause of §1, the court ruled all of §2(b) unconstitutionally overbroad because of possible inclusion of protecting picketing. Even if this reasoning were sound it would at most justify holding the "aid or

abet" clause invalid as applied to §2(b). However the reasoning itself is fundamentally unsound. Any picketing which would constitute aiding and abetting a secondary strike can be constitutionally prohibited by the Texas statute under the above quoted doctrine announced in *Vogt*. Prohibition of secondary strikes is certainly within the area of permissible state public policy, and *Vogt* expressly permits prohibition of picketing "aimed at preventing effectuation of that policy".

Turning now to the §2(e) definition of "secondary boycott", it is clear that the court below ignored the plain language of the statute, and the legislative scheme therein established. The court relied upon the "aid or abet" argument which Appellants have refuted in their discussion of §2(b) above. As shown there, the rationale of the district court is inadequate in light of *International Brotherhood of Teamsters v. Vogt*, supra, wherein this Court expressly recognized the power of the State constitutionally to enjoin even *peaceful* picketing when such picketing is aimed at preventing effectuation of a permissible public policy.

The district court placed the cart before the horse when it reasoned first that Texas had prohibited second boycott picketing, second that such picketing is constitutionally protected, and then concluded therefrom that the entire secondary boycott prohibition is invalid. The doctrine of *Vogt* requires that the prohibition of secondary boycott picketing be condemned *only if* the prohibition of the secondary boycott first be held an impermissible public policy. The district court, however, did not even consider the question of the validity of the State's public policy against secondary boycotts, beyond its wholly inaccurate observation: "The evil here is 'damage or injury' of any

character or degree no matter how slight or subtle." 347 F.Supp. at 628. The court appears to have ignored the greater portion of §2(e) which sets forth in detail the specific manner by which the damage or injury must be inflicted, each of which constitutes a statement of legitimate public policy sought to be protected by this legislative enactment. It is the contention of Appellants that these limiting clauses of §2(e) spell out specifically the state public policy prohibiting secondary boycotts, and that as such, the State may also prohibit picketing aimed at preventing effectuation of that policy, in accordance with the *Vogt* doctrine.

It is therefore clear that the rationale of the court below is inadequate to support its ruling of unconstitutionality with respect to Article 5154f, and furthermore that the reasoning of the court below is in error even to that limited extent to which it would hold minimal portions of that statute unconstitutional. Article 5154f is clear and concise and is a valid exercise of legislative discretion under its inherent police power. We therefore contend that it is constitutional in every respect.

ARTICLE 482 OF THE TEXAS PENAL CODE IS NOT UNCONSTITUTIONAL FOR OVER BREADTH.

Article 482 provides as follows:

"Any person who shall in the presence of hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars."

This Honorable Court in *Chaplinsky v. State of New Hampshire*, 315 U.S. 568 (1942), had before it for interpretation the New Hampshire abusive language statute. There this Court stated at page 571:

"Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.' *Cantwell v. Connecticut*, 310 U.S. 296, 309, 310, 60 S.Ct. 900, 906, 84 L.Ed. 1213, 128 A.L.R. 1352."

That Article 482 of the Texas Penal Code which prohibits the use of abusive language is constitutional is settled by this unanimous decision in *Chaplinsky*, supra, upholding a statute with a similar purpose but couched in far more general terms. See also the Arkansas statute, very similar in its language to this Texas statute, noted approvingly by this Honorable Court in *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 138 n. 5 (1957).

ARTICLE 439 OF THE TEXAS PENAL CODE IS
NOT UNCONSTITUTIONAL.

Article 439 reads as follows:

"An 'unlawful assembly' is the meeting of three or more persons with intent to aid each other by violence or in any manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof."

Article 449 reads as follows:

"If the purpose of the unlawful assembly be to prevent any person from pursuing any labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another, the punishment shall be by fine not exceeding five hundred dollars."

If Article 439 stood alone it might be subject to challenge on grounds of unconstitutional indefiniteness, though even that challenge probably would fail. Insofar as it makes it criminal for three or more persons to aid each other "to commit an offense" it is merely a conspiracy statute. Cf. 18 U.S.C. Section 371. It also prohibits such an assembly "illegally to deprive any person of any right" the reference to the rights that are protected is surely not specific, though it is relevant to note that 18 U.S.C. Section 242, making it criminal to deprive any person "of any rights, privileges or immunities secured or protected by the Constitution or Laws of the United States", has been upheld against challenge on the ground of vagueness. *Williams v. United States*, 341 U.S. 97, 100-101 (1951). The word "illegally" may well be the key, since it is not a

conspiracy to deprive a person of a right that is prohibited, but only a conspiracy illegally to deprive him of a right. Thus this portion of the statute makes criminal a conspiracy to do something that the law of the State, including the civil statutes and the common law, prohibits.

For the purposes to this case Article 439 must be read together with Article 449. Taking these statutes together, as the Texas courts have consistently done, they say:

"An 'unlawful assembly' is the meeting of three or more persons with intent to aid each other by violence or in any other manner . . . to prevent any person from pursuing any labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another . . ."

This expresses in words of common understanding the kind of conduct by a group of persons that is prohibited by the statute. The notion that a group of persons have a constitutional right to prevent someone else from working at his employment is hardly likely to be the law. The Texas Court of Criminal Appeals has given these statutes very narrow interpretations and required that the indictments set out in detail the matter with which the persons are actually charged. For example, *Blackwell v. State*, 18 S.W. 676, the court said that if the indictment or information throughout did not show for what purpose the rioters assembled, the information was insufficient. In the case of *Follis v. State*, 40 S.W. 277, it was held that an indictment for unlawful assembly to prevent a party by violence from having a social gathering or dance at his house should allege that such party has a house and was giving or about to give a social gathering or dance. In *Luter*

v. State, 22 S.W. 140, the court held information was defective under Article 449 for failure to set forth the nature of the "unlawful employment".

In *Briscoe v. State*, (1961), 341 S.W.2d 432, the indictment was held defective because there was no notice as to whether the State would rely on intent by violence to disturb the victim and deprive him of his right to operate a lunch counter or would rely on proof on an intent to deprive him of such right by some means other than by the use of violence. The attention of the Court is also directed to *Tucker v. State*, (1961), 341 S.W.2d 433, and *Johnson v. State*, (1961), 341 S.W.2d 434. Likewise in *Jones v. State*, (1962), 355 S.W.2d 727, the mere attempt to procure service at a railroad terminal without an act of violence or other violation of the law would not justify conviction.

We recognize that the right of lawful assembly is constitutionally protected. The statute is not directed at a lawful assembly, but at the unlawful one which is not constitutionally protected. See *Cox v. Louisiana*, 379 U.S. 559. It is well settled that courts are inclined to adopt that reasonable interpretation of a statute which moves it furthest from possible constitutional infirmity. *Kovacs v. Copper*, 336 U.S. 77 (1948); *Cox v. Louisiana*, supra. It has likewise been held that even a lawful assembly is subject to State regulation. *Poulos v. State of New Hampshire*, 345 U.S. 395 (1953). In the latter case the court stated at page 405:

"The principles of the First Amendment are not to be treated as a promise that everyone with opinions or beliefs to express may gather around him at any public place and at any time a group for discussion or

instruction . . . it has indicated approval of reasonable non-discriminatory regulation by governmental authority that preserves peace, order and tranquility without deprivation of First Amendment guarantees of free speech, press, and the exercise of religion. When considering specifically the regulation of the use of public parks, this court has taken the same position."

In the case of *Hughes, et al v. Superior Court of California*, 339 U.S. 460 (1950), the court held that industrial picketing was subject to the control of a state if the manner in which the picketing was conducted or the purpose which it seeks to effectuate gives ground for its disallowance. The court, however held:

"It has been amply recognized that picketing, not being the equivalent of free speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond control of a State if the manner in which the picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance."

See cases cited therein at page 466.

Texas has a "right to work law". Article 5207a, Vernon's Annotated Statutes, and similar statutes have been held constitutional by the Texas and the United States Supreme Courts. *Construction and General Labor Union v. Stephenson*, (Tex.Sup. 1950) 225 S.W.2d 958, *Building Service Employees Union, etc. v. Gazzan*, supra. To hold that the right to work law is constitutional and to hold that the State cannot declare illegal an assembly whose purpose is to prevent a person from pursuing his labor, occupation, or employment or intimidate him from following his daily avocation or to interfere in any manner

with the labor or employment of another would make the right to work statute meaningless.

We submit that the statute in question is not unconstitutional for over breadth as the court below found.

THE COURT BELOW IMPROPERLY ORDERED INJUNCTIVE RELIEF AGAINST PEACE OFFICERS OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY AND THE LAW ENFORCEMENT OFFICERS OF STARR COUNTY IN THIS CASE WHERE PROSECUTIONS WERE PENDING IN THE STATE COURTS.

The effect of the holding in the court below was to require federal intervention and to threaten state prosecutions. The order of the court coupled with the injunction, prevents enforcement of the statutes, either by criminal complaint or civil petition, regardless of the peaceful or non-peaceful nature of the picketing activities.

The witnesses presented by Appellees in defense of their position and their contentions that the criminal charges pending against them were maliciously filed are supported only by the testimony of those who are charged with the commission of the crime. The case was brought about as an effort on the part of the Appellee to kill charges pending against them in state court by federal intervention rather than by allowing a jury of their peers to determine the questions of guilt or innocence as is provided by the Constitution of the United States and the State of Texas. It is important to note in this case that Appellees have not contended that the Appellants in the future will attempt to again institute proceedings against them under void statutes or because they wish to harass Appellees by filing

charges with no expectations of obtaining convictions. The record reflects a very good basis for Appellees not advancing this theory. The president of the Farm Workers Union, Domingo Arredondo, one of the Appellees herein, frankly states that picketing continued until it was stopped by injunction. It was not the arrest that "chilled" Appellees' alleged constitutional right and destroyed the strike. Unless and until the existing injunction is dissolved or the case reversed on appeal, Appellees cannot engage in further picketing as prior picketing was found to be "coupled with violence".

There have been no arrests or threatened arrests of any of the Appellees by any of the Appellants since the institution of this lawsuit which is approximately during a period of four years.

The Three-Judge Court below relied on *Dombrowski v. Pfister*, 380 U.S. 479, 482-485 (1965), *supra*, as authority for entering the arena of state prosecution at the early stages. This reliance apparently ignored the decision of this Court in *Cameron v. Johnson*, 390 U.S. 617 (1968).

Any notion that *Dombrowski*, *supra*, had opened wide the door to federal court intervention was dispelled in *Cameron*, *supra*. In *Dombrowski*, *supra*, the court there pointed out that the statutes challenged regulated "expression itself", rather than, as in *Cameron*, *supra*, statutes regulating "conduct which is intertwined with expression". In this respect our case is like *Cameron* and unlike *Dombrowski*.

The court below misapplied *Younger v. Harris*, 401 U.S. 37 (1971). *Younger* holds that federal courts may not enjoin pending state court criminal prosecution unless the

applicant makes a showing of irreparable harm which is both great and immediate. Disclaiming any intent to catalogue exhaustively the situations where irreparable harm can be said to exist, this court in *Younger* did, however, discuss two fact circumstances which would justify federal court intervention. First, an injunction would be granted by the federal district court to prevent a prosecution undertaken for a purpose of harassment and in bad faith without any expectations of securing a valid conviction. Secondly, the court suggested that, even in the absence of the usual requisites of bad faith and harassment, a "statute might be (so) flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whom ever an effort might be made to apply it," that federal injunctive relief would be available to prevent attempts to prosecute under it. In any case, the harm required to be shown must be comparable to the harm present in the situation described by the court. *Younger* also holds that the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution cannot, by itself, be considered irreparable damage, as that term was used by the court.

The evidence does not reflect that either the Starr County officials or the Texas Rangers, in attempting to enforce the statutes in question knew or had cause to believe that any particular statute was unconstitutional. Certainly, in the absence of any state court holding any of these statutes to be unconstitutional prior to the time of the arrest of the Appellees during the strike, the law enforcement officers, the group from Starr County as well as the Texas Rangers, who are not versed in constitutional law cannot be expected to know that such statute might be later struck down in federal court.

In the court below Appellees claimed that the officials of Starr County and the Texas Rangers were biased and merely arrested the Appellees to destroy the union. This contention is utterly ridiculous. Even if the officers had hoped to stop union activity, which is untrue, the president of the union testified that picketing continued until the union was enjoined in state court from further picketing because the picketing had been coupled with actual violence.

Members of the union are not above the law merely because of the union membership. The testimony by the various defendants clearly proves that violations of law had occurred prior to each arrest. Appellees' position below was that the law enforcement officers were attempting to destroy the union by arrests on one hand and by criticizing the law enforcement officers for not filing complaints on various other offenses and contending that this action of the law enforcement officials indicated that Appellees were not violating other statutes. Certainly if the law enforcement officials were attempting to destroy the union by arrests, arrests would have been made almost daily as the picketing occurred daily. In addition, complaints could have been filed against those arrested under every possible statute where charges could be brought. The true inference to be drawn from the facts that other charges were not filed was that the officers, at the time the arrests were made, were merely trying to uphold the laws of the State of Texas and preserve the peace.

It is submitted that injunctive relief was not proper under the facts and circumstances as revealed above. It could not be presumed that the state courts will not accord defendants their full federal and state constitutional rights in state court trials. *Walker v. Birmingham*,

388 U.S. 307, 319 (1967); *Harris v. N.A.A.C.P.*, 360 U.S. 167 (1959). The mere possibility of an erroneous application of constitutional standards will not justify federal courts disrupting state proceedings. *Cameron v. Johnson*, supra; *Dombrowski v. Pfister*, supra. The state courts, presumably, would have construed the various statutes involved and applied them in keeping with constitutional principles, and the court below should have assumed that the state courts would do so.

"Principle of comity, of cooperation and of rapport between the two sovereigns," *Texas v. Payton*, 390 F.2d 261, 270 (5th Cir. 1968), strongly suggests that criminal law enforcement should be left to the states, and that except in the most extraordinary circumstances a federal court should not interfere by injunction with pending state proceedings. Deference by the federal courts to the states in this area recognizes that the "state court at least co-equal with federal courts in its duties and responsibilities in the administration of federal constitutional law." *Id.* at 272.

CONCLUSION

The Three-Judge Federal Court below incorrectly held Section I of Article 5154d, Section 1 and 2 of Article 5154f of Vernon's Civil Statutes and Articles 482 and 439 of the Texas Penal Code to be unconstitutional for the reasons given above. Furthermore, whether these statutes be constitutional or unconstitutional, the court below erroneously, under the principles of federalism, enjoined state officials from enforcing the statutes.

Respectfully submitted,

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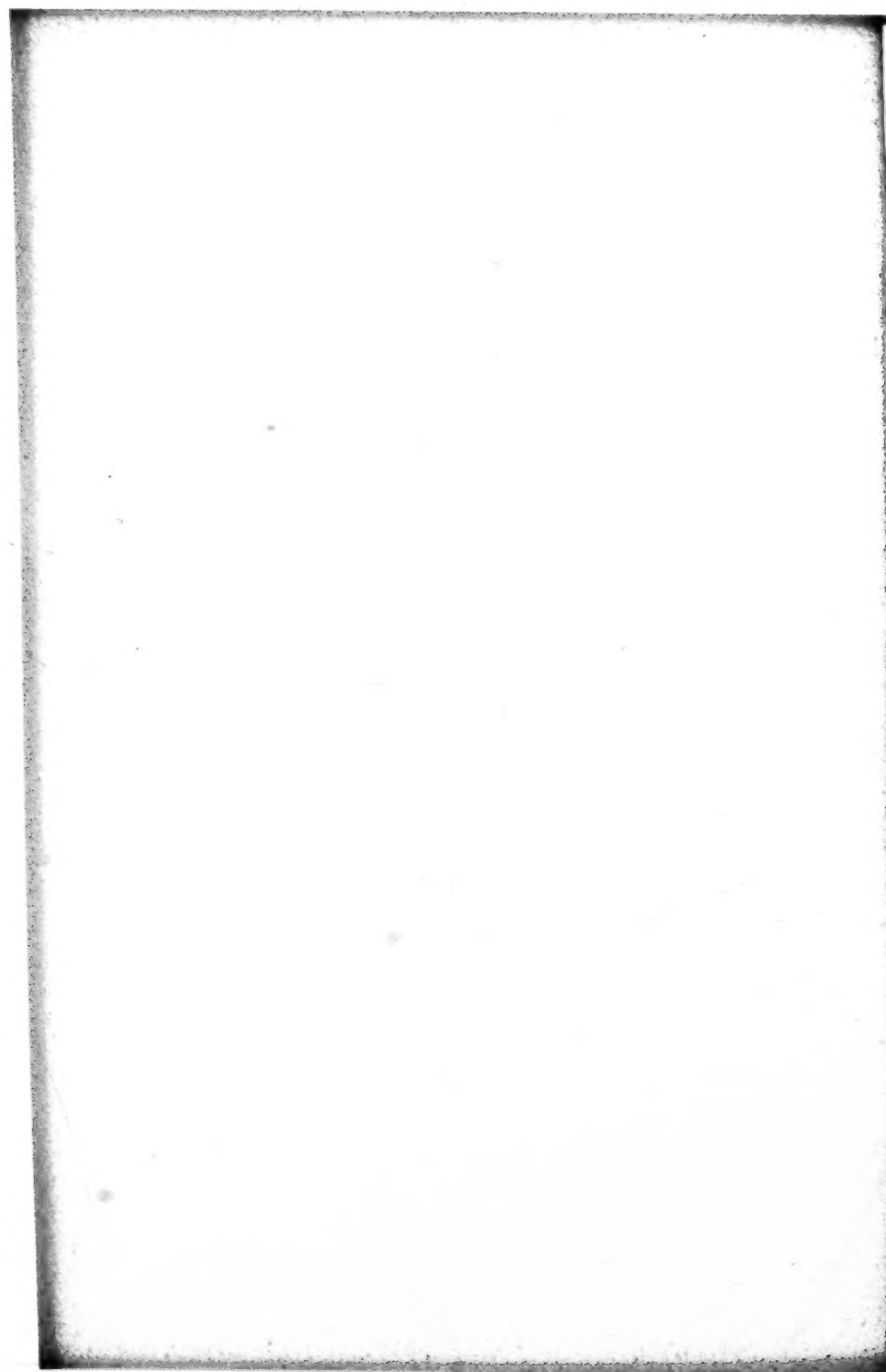
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CERTIFICATE OF SERVICE

I, Gilbert J. Pena, a member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of the foregoing Appellants' Brief has been served on counsel for the Appellees by depositing same in the United States Mail, certified, postage prepaid, addressed to Mr. Chris Dixie, Attorney at Law, 609 Fannin Street Building, Suite 401, Houston, Texas 77002, on this the _____ day of June, 1973.

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NO. 72-1125

IN THE
Supreme Court of the United States

October Term, 1972

A. Y. ALLEE, ET AL, *Appellants*

v.

FRANCISCO MEDRANO, ET AL, *Appellees*

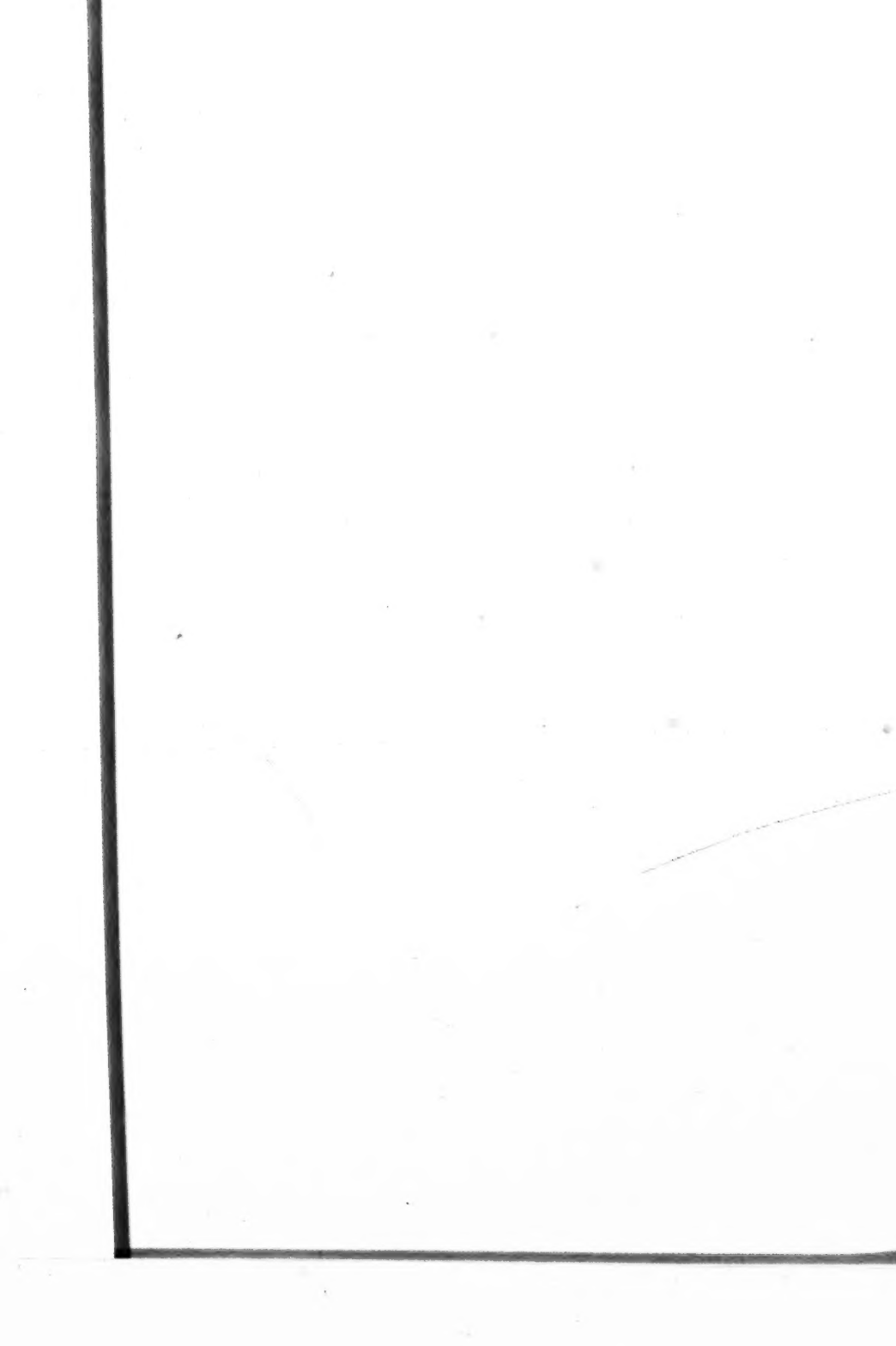
**On Direct Appeal From The United States District
Court, Southern District of Texas,
Brownsville Division**

BRIEF FOR THE APPELLEES

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NO. 72-1125

IN THE
Supreme Court of the United States
October Term, 1972

A. Y. ALLEE, ET AL, *Appellants*

v.

FRANCISCO MEDRANO, ET AL, *Appellees*

**On Direct Appeal From The United States District
Court, Southern District of Texas,
Brownsville Division**

BRIEF FOR THE APPELLEES

This appeal has been perfected by only five of the original defendants, Texas Rangers A. Y. Allee, Jack Van Cleve, Jerome Preiss, T. H. Dawson, and S. H. Denson. The judgment has become final as to the five other defendants who are the Sheriff and two Deputy Sheriffs of Starr County, Texas, Jim Rochester, a Special Deputy of the Sheriff's Department, and B. S. Lopez, a Justice of the Peace.

PRELIMINARY STATEMENT

Appellants' brief, like the Jurisdictional Statement before it, makes no challenge under Rule 52 F.R.C.P. or other reference to the fact findings of the district court. These unchallenged fact findings are found in the Appendix to the Jurisdictional Statement. We refer to these findings by the designation JS App. _____. (References to the Single Appendix printed for this case are designated App. _____.)

Appellants' brief presents a version of the evidence which is inconsistent with the express fact findings or the reasonable inferences which flow from such findings. Much of it is completely alien to the record.

In a few words, the district court found that the ten defendant law officers engaged in a year-long conspiracy to take sides in a labor-management controversy, to prevent the success of the union's organizing effort, to restrain the supporters of the organizing drive from exercising their rights under the Constitution of the United States, and to exhibit their personal bias and opinions against the strikers and their cause (JS App. 49-51). The methods used were arrests and detentions without the filing of charges, dispersals of pickets and demonstrators, threats of future prosecutions if union activities did not cease, abuse of the bonding process, and inducements by defendant peace officers to strikers to return to work, all of which, the district court found, constituted a "pattern of action" designed to halt the strike and to discourage attempts to engage in constitutionally protected conduct in support of the strike (JS App. 51). Further, as a part of this pattern the defendants instituted prosecutions in bad faith and for the purpose of harassment (JS App. 55). Under this pressure the union's efforts

collapsed in June of 1967, and this suit was filed in an effort to seek relief (JS App. 51-52).

An integral part of this official lawlessness was the infliction of serious physical violence by the defendant law officers upon the persons of union supporters (JS App. 45-46; 47-49).

A further element of this conspiracy, the district court found, was the employment of the challenged statutes for the bad faith arrests and prosecutions of plaintiffs. The district court concluded that the requirements of *Younger v. Harris*, 401 U.S. 37 (1971), and its companion cases were well satisfied and that irreparable injury was demonstrated also by the fact that defendants prevented plaintiffs from defending their conduct effectively by such additional means as the dispersal of union supporters under threats of arrest, by arrests without charges, by the filing of numerous charges, by the supporting of a private anti-union newspaper, and by threats to union supporters who were in custody or who were seeking to file their own charges, or who were engaged in picketing, or who, sometimes, were engaged in no activity whatsoever (J.S. App. 55). The district court's careful analysis and application of the *Younger v. Harris* tests is at J.S. App. 51-55.

QUESTIONS PRESENTED

1. Whether the district court's findings, which are not challenged as "clearly erroneous" by appellants, that defendants had engaged in bad-faith prosecution and harassment of plaintiffs to discourage the exercise of their constitutional rights were sufficient under *Younger v. Harris*, 401 U.S. 37, to justify the limited injunction entered against the defendants?

2. Whether the Texas statutes which the district court found to be the basis of the bad-faith prosecutions brought by defendants are unconstitutional?

The challenged statutes are four: (1) Mass Picketing, (2) Unlawful Assembly, (3) Abusive Language, and (4) Secondary Picketing, Striking, and Boycott.

The district court declared the Texas Disturbing the Peace statute unconstitutional, but no appeal has been taken from this decision.

The district court upheld the constitutionality of Article 784 of the Texas Penal Code which prohibits obstructing public streets.

SUMMARY OF THE ARGUMENT

The Statement of the Case under the topic "The Harassment Facts," pp. 10-20, *infra*, collates the detailed fact findings of the district court and presents also some cumulative undisputed evidence. It serves to demonstrate the bad-faith use of the challenged statutes to disperse, arrest, and prosecute plaintiffs as an integral part of the official lawlessness directed toward plaintiffs.

The Argument under Topic 1, "*Younger v. Harris* Tests are Satisfied," pp. 20-23, *infra*, callates the many facts and circumstances which constitute irreparable harm to plaintiffs not redressible by the defense of pending cases. We show that the district court carefully and correctly applied the *Younger v. Harris* tests before proceeding to limited injunctive relief and declaratory judgment.

The Argument under Topic 2, "Factual and Legal Setting of the Application of the Challenged Statutes," pp. 23-29, *infra*, develops these points:

1. The challenged statutes aim directly at pure speech (Abusive Language), pure assembly (Unlawful Assembly), or regulate the place and manner of expression and cumulative conduct (Mass Picketing), or prohibit picketing and related inducements in labor disputes (Secondary Picketing, Striking and Boycott).

2. Since it was stipulated and clearly demonstrated that plaintiffs' program and objectives were strictly in accord with Texas public policy, plaintiffs' activities were protected by the First Amendment if peacefully conducted. Plaintiffs were in fact repeatedly arrested and charged while engaged in constitutionally protected conduct. Each challenged statute was in fact applied to disrupt First Amendment speech and assembly.

3. The physical scene of the labor dispute was the rural area of South Texas. The usual traffic problems were absent. The employers are large growers who employ hundreds of employees.

4. Each of the many repeated arrests or dispersals was under authority of only a single one of the challenged statutes, but all of them could have been applied on each occasion to plaintiffs' constitutionally protected activities as the Attorney General demonstrated to the court below.

The Argument under Topic 3, "Mass Picketing Statute," pp. 29-36, *infra*, shows that the term is a mere label. The statute requires the spacing of pickets at 2 every 50 feet in all circumstances. The statute also applies only to pickets stationed by an organization but not to others who stand closer than two every 50 feet. It also applies regardless of actual obstruction, reasonable or unreasonable. The formula is entirely unreasonable under the

principles stated in *Grayned v. City of Rockford*, 408 U.S. 104 (1972). It is also discriminatory. *Police Department of City of Chicago v. Mosley*, 408 U.S. 92 (1972).

Under Topic 4, "Unlawful Assembly Statute," pp. 36-40, *infra*, the unconstitutionality of the state is demonstrated under authority of *Brandenburg v. Ohio*, 395 U.S. 444 (1969). The Texas statute prohibits a meeting of three or more persons with intent to aid each other "by violence or in any other manner" to commit an offense, illegally deprive anyone of any right, or to "disturb" anyone in the enjoyment of any of his rights.

Under Topic 5, "Abusive Language Statute," pp. 40-42, *infra*, the unconstitutionality of the statute is demonstrated under *Gooding v. Wilson*, 405 U.S. 518 (1972). The Texas statute is identical to the one in *Gooding*.

Under Topic 6, "Secondary Strike and Boycott Statute," pp. 42-56, *infra*, it is demonstrated how decisions of the Texas courts have invalidated the statute and how defendant officers nevertheless utilized it to arrest plaintiffs for conduct plainly identified by the Texas Supreme Court to be constitutionally privileged. The Texas Supreme Court after rejecting the statutory tests has pronounced other and different common law tests of secondary boycott which are now effective in Texas, and these are enforceable in the equity court according to a balancing formula designed by the Texas Court. These Texas cases demonstrate that the state courts have elected not to limit the literal terms of the statute by judicial gloss or by plastic surgery but have accepted its overbroad language to be fatal. As so construed the statute is unconstitutional under the principles of *International Brotherhood of Teamsters*

v. *Vogt*, 354 U.S. 284 (1957). The judgment of the district court does not change or affect existing Texas laws. Rather, it terminates improper arrests under an invalid and obsolete statute.

STATEMENT OF THE CASE

1. The Judgment Below

The judgment below does not enjoin pending state prosecutions. Nor does it enjoin future application of these statutes at the hands of state authorities other than the specific 10 peace officers who deliberately misused the challenged statutes to effectuate their conspiracy with private parties.

Narrowly drawn in on paragraph (App. 100-101), the injunction order is specifically "directed to" the five named Texas Rangers (one Captain and four Privates), the Sheriff of Starr County, Texas, and his two named deputies, and their agents, employees, successors in office, and persons in active concert with them (App. 95-96) and the two other named persons. This group is ordered not to enforce the challenged statutes against Plaintiffs and their supporters by "... arresting, imprisoning, filing criminal charges, threatening to arrest, or ordering or advising or suggesting that they disperse under authority of ... such statutes. (App. 100-101)

Thus, carefully matched to the specific evils encountered, the injunction leaves the Attorney General of Texas, prosecutorial officials and private parties free to litigate under the statutes either in the pending prosecutions or in new cases. Authoritative state court constructions to save the statutes' constitutionality by defining their proper application can be obtained anytime

state officials desire. Of course, other peace officers all over Texas are not covered by the injunction and may utilize the statutes as they see fit.

The main thrust of the final judgment is to render declaratory judgment as prayed for under the Declaratory Judgment Act, 28 U.S.C.A. 2201 and 2202, and to render injunctive relief as prayed for under the Civil Rights Acts, 42 U.S.C.A., §1983 and §1985 on account of the adjudicated conspiracy of the defendants to deprive plaintiffs of their civil rights, privileges and immunities protected by the Constitution of the United States by acts under color of state law.

There is no challenge on this appeal to the injunctive relief against the official lawlessness found to exist and adjudicated to be in violation of the Civil Rights Acts. (App. 72; 101-102). The conspiracy facts under these acts and the harassment facts under *Younger v. Harris* requirements turn out to be the same in this case.

The Supreme Court is respectfully advised that the preservation of this unchallenged part of the judgment below is of highest importance to these Appellees who have been terrorized enough by the law officers.

2. Legal and Economic Background

The federal statute does not cover farm workers because the definition of "employee" in 29 U.S.C.A., §152, contains the proviso that the term "shall not include any individual employed as an agricultural laborer. . . ."

Article 5153 of Vernon's Annotated Texas Statutes provides that it shall be lawful for any member of a union or other organization to induce or attempt to induce by peaceful and lawful means any person to accept any

particular employment, or enter or refuse to enter any pursuit, or to quit or relinquish any particular employment (Appendix, *infra*, p. 57). Article 5207a, §1, guarantees the right of every person to bargain individually or collectively with his employer (Appendix, *infra*, p. 57). Article 5154b prohibits picketing or striking in breach of a labor contract. (Appendix, *infra*, p. 57)

Under these Texas statutes the right to organize an association of farm workers, the right to appeal to employees to quit any particular employment or to refuse to enter upon it, and the right to seek collective or individual bargaining are entirely consistent with state policy. This was stipulated. (App. 24).

However, an employer is under no statutory duty to recognize a union selected by his employees and has no duty to bargain for a labor contract. *Flenoy v. Yarbrough*, 318 S.W.2d 15, writ ref., n.r.e. An employer may recognize a union as a representative of one, several, or all of his employees if he desires to do so, or he may fight economically and may defeat union organization by replacing strikers, or by other lawful means. In short, Texas law looks to the survival of the fittest economically.

In this case it was stipulated that the ultimate objective of the farm workers was in keeping with the public policy of the State. Indeed, their efforts to solicit support were exactly the last resort that Texas statutes contemplate in view of employer resistance to union organization. (App. 24).

Starr County, Texas, one of the poorest in the nation economically (App. 22-24), is located deep in the Rio Grande Valley. This labor dispute involved several large growers which are shown by the record to cultivate thou-

sands of acres with hundreds of farm workers employed during harvest seasons of the year. Largely these farm workers are of Latin-American extraction of both U.S. and Mexican residence and citizenship. A substantial part of the labor force is transported to the farms in bus loads. (App. 369).

3. The Harassment Facts

Regardless of the broad experience of the Justices of this Court, we think Your Honors have not seen a case like this.

The district court found that the farm workers in Starr County attempted for one full year, June 1, 1966 to June 1, 1967, to exercise their rights of citizenship, but during the entire year they were systematically set upon, threatened, dispersed, arrested, jailed, detained, man-handled and even beaten. Throughout, the law officers intertwined their enforcement of these unconstitutional statutes. The district court's findings of fact are set out at J.S. App. pp. 34-55.

Substantially as found by the district court, the farm workers' travail was this:

Union organization started June 1, 1966. Within one week, on June 8, 1966, Eugene Nelson, a union leader, was stopped from soliciting the support of agricultural workers at the Roma International Bridge, arrested without warrant or charge, jailed for several hours in the county jail of Starr County, counseled in a menacing way by the county attorney, then released without charge. (J.S. App. 38-39).

As union organization developed in the summer of 1966, the Sheriff's office commenced the distribution of a

"violently" anti-union weekly newspaper, *La Verdad*. Weekly, Deputy Sheriffs went to the bus station in official cars to pick up these newspapers, took them to the Sheriff's office and prepared them for distribution to the public, including house-to-house distribution by deputy sheriffs. The district court attached copies of *La Verdad* to its opinion. The headlines said: "ONLY MEXICAN SUBVERSIVE GROUP COULD SYMPATHIZE WITH VALLEY FARM WORKERS," UNION LEADERS IN VALLEY ARE VAGRANTS," and "GOVERNOR CONNALLY SHOULD DO SOMETHING ABOUT VALLEY STRIKE." The Supreme Court will please bear in mind that the deputy sheriff distributors of these weekly newspapers were the law officers who administered the statutes here challenged. (J.S. App. 49).

On October 12, 1966, about 25 farm workers appeared on U. S. Highway 83 adjacent to the Rancho Grande Farms to solicit support of the workers in the fields. Deputy Sheriff Raul Pena dispersed these persons by threatening to arrest them for disturbing the peace in violation of Article 474. The farm workers did disperse under this threat, but William Chandler was arrested and charged with disturbing the peace when he told Pena that he had no right to order these people to disperse. Although Pena testified that Chandler and the others were using abusive and vulgar language, Pena's signed complaint against Chandler shows that the words "obscene language, vulgar language, indecent language, swearing and cursing, yelling and shrieking, exposing the person, and rudely displaying a weapon" had been scratched out of the printed form leaving only the charge of using "loud and vociferous language." The district court concluded from the evidence that the union supporters were engaged in peaceful picket-

ing along the highway right of way when ordered to disperse. (JS App. 39) After being arrested by Pena, Chandler was jailed and placed under \$500 bond, although the maximum fine for the offense was \$200. When two union supporters went to the courthouse to make bond for Chandler, a deputy sheriff cursed them and told them that if they did not leave the courthouse they, too, would be jailed. (JS App. 39-40)

On October 24, 1966, Domingo Arrendo, then under arrest, uttered the words "Viva La Huelga" (long live the strike) in the courthouse, whereupon a deputy sheriff slapped him and put a cocked pistol to his head. The deputy ordered him not to utter those words in the courthouse again. (J.S. App. 40).

On November 9, 1966, defendant Deputy Sheriff Roberto Pena filed criminal charges of aiding and abetting a "Secondary Strike" under Article 5154f against 10 union supporters on account of their picketing at the packing shed of La Casita Farms on November 3. The La Casita shed is located about 30 feet from the public highway where the picketing occurred. (App. 341; Pl. Ex. 7.24A; Pl. Ex. 7.5a; Pl. Ex. 7.5B; Pl. Ex. 7.5C; Pl. Ex. 7.5D)

Texas Rangers were called from afar to serve the warrants of arrest on the ten persons. Two Texas Rangers, Frank Harger and Jerome Preiss, arrested two union members and put them in the police car. In the car the Rangers told the two farm workers that they could go to work for La Casita Farms for \$1.25 an hour (the union objective), that later they could get a more peaceful union, and that the Rangers were there to break the strike and would not leave until they had done so. This

was aptly described by the district court as selective law enforcement. (JS App. 40-41)

We invite the Court's attention to the manipulation of the Texas statute in these November 9 charges. Article 5154f renders either picketing or striking "secondary" (and thus illegal) if not part of a "labor dispute." In turn, a "labor dispute" is limited to a controversy between an employer and a majority of his employees.

Texas courts have long since declared the "secondary picketing" phrase of Article 5154f to be unconstitutional since simple primary picketing by a minority of employees which violates no public policy of the State is constitutionally privileged. *Ex Parte Henry*, 215 S.W.2d 588; *I.U.O.E. v. Cox*, 219 S.W.2d 787; *General Labor Union v. Stephenson*, 225 S.W.2d 958. Notwithstanding the constitutionally privileged character of this primary picketing at the packing sheds, the November 9th charges presented an ingenious new angle. The pickets, the charges alleged, did "aid and abet" a "secondary strike" when the engineer and fireman of the Missouri Pacific Railroad declined to cross the picket line to go to the packing shed. After all, the engineer and the fireman were certainly less than a majority of the railroad's employees, and, therefore, the picketers, by picketing, aided and abetted them in a "secondary strike." This was a cute way around the cited *Henry*, *Cox* and *Stephenson* decisions and furnished a pretext for the arrest of union adherents for peaceful and privileged primary picketing. Article 5154f provides a penalty up to six months in jail for its violation. Of course, these charges have never been set for trial in the intervening seven years.

This performance was repeated by the defendant law officers on June 1, 1967, when three farm workers were

arrested for picketing at the same place. (Pl. Ex. 7.24C; App. 336-342).

These object lessons could hardly be misunderstood by the union sympathizers. If they could be prosecuted for "aiding and abetting a secondary strike" while lawfully picketing at the public road 30 feet away from La Casita Farms' shed, then picketing, however lawful as to the growers, would subject them to arrest wherever done.

On January 26, 1967, five union sympathizers were arrested on the banks of the Rio Grande River while soliciting the employees of Trophy Farms to join the union. The charge this time was Abusive Language in violation of Article 482 in that they did curse or abuse or used violently abusive language toward the workers under circumstances reasonably calculated to provoke a breach of the peace. That evening approximately 20 union supporters gathered at the courthouse to conduct a prayer vigil. Two members of the group, Reverend James Drake and Gilbert Padilla, mounted the courthouse steps and engaged in prayer. Deputy Sheriff Raul Pena ordered the group to leave the courthouse grounds and they did so, but Drake and Padilla remained on the steps. The deputy thereupon arrested them for Unlawful Assembly in violation of Article 439. (JS App. 41-42)

No Texas statute prohibits the presence of this group on courthouse grounds. By stipulation it was established that the courthouse grounds had been used in the past for night rallies and dances by custom and practice in the particular county. The court below found this to be one of the several episodes of selective enforcement by the defendants. (JS App. 42)

Although stipulation and evidence established that orchestras and record players had played loudly at night on the very courthouse steps where Drake and Padilla prayed quietly (App. 164; 166; 628), and that courthouse grounds had been used by political parties to erect tents, the Unlawful Assembly criminal complaint alleged that Drake and Padilla disturbed the night custodian of the courthouse. (App. 79)

On February 1, 1967, two Catholic priests, Father Smith and Father Killian, and three other priests, assembled in a wooded area on private property owned by one Thomas Bazan adjacent to the property of La Casita Farms. The five priests solicited the workers in the fields to join the Union. They were promptly arrested for Disturbing the Peace and taken to a magistrate. (JS App. 42-43)

There the magistrate, B. S. Lopez, Justice of the Peace, informed the priests that if they were ever brought into the same court under the same charge they would be put under a peace bond, and if they couldn't meet the bond, they would be put in jail. Relative to these arrests the Attorney General of Texas made the following statement before the three judge court. He said in Defendants' Post Hearing Brief:

"Based on the testimony of the two Catholic priests, Father Smith and Father Killian, everyone present could have been charged with the violation of Article 5154d, mass picketing, with Articles 439 and 449, unlawful assembly, and possibly under Article 482, abusive language, as Father Smith stated that they were calling the workers 'scab' in Spanish in attempting to use the word that has 'punch to it and an edge on it.'" (Appendix, *infra*, p. 58.)

As of May 11, 1967, the farm workers had developed important support on the Mexican side. As a result, on that day no Mexican farm workers came across the Rio Grande river to do work for the growers. (App. 203) This development triggered intense activity on the part of Texas Rangers.

On the morning of May 11, 1967, a group of farm workers supporters left Roma Bridge headed south for the Camargo Bridge. On the way their car was stopped by a Texas Ranger. The driver of the car was arrested for not having a driver's license. On the same day, Ranger Captain Allee solicited union adherents to go to work for \$1.25 per hour. (JS App. 43)

On May 12, 1967, Texas Rangers received a complaint from La Casita Farms that the union people were on private property owned by one Solis adjacent to the property of La Casita. The Texas Rangers promptly went to the scene of the solicitation. First they made investigation whether the union supporters had permission from Mr. Solis to be on his private property. Then the Texas Rangers caused the pickets to spread out 50 feet apart. Reverend Edward Krueger, a union sympathizer, stepped off the distance to comply with the Rangers' instructions. All this took place in the woods. (JS App. 43-44; App. 796)

Later that day, May 12, Eugene Nelson went to the Sheriff's office to complain that the Texas Rangers were acting as a private police force for La Casita Farms. As a result, Nelson was arrested and charged with threatening the life of certain Texas Rangers. Defendant, Captain Allee, testified that he did not take the "threat" seriously, he directed that charges be filed against Nelson

in order to protect the Texas Rangers from criticism if something happened to Nelson. After Nelson was jailed on this charge, the Sheriff's deputies unlawfully refused to accept a tendered appearance bond although they knew that the bond was signed by a prominent landowner in Starr County, one Joseph Guerra. (JS App. 44) The Texas Rangers who arrested Nelson on this charge told him that he had lived a charmed life in Starr County long enough and warned him not to go too near the river or he might end up floating down. (App. 122-123)

On May 18, 1967, a group of about 22 Pickets assembled at the side of U. S. Highway 83 to solicit support from workers in the fields of Trophy Farms. Defendant Ranger Captain A. Y. Allee testified that he was called to the scene by a Trophy Farms official, and when he arrived he found 10 or 12 pickets on the side of the road "all in a bunch" (but not near the Trophy Farms gate). He thereupon arrested them since they were bunched up. (App. 797-799) The Ranger Captain testified that he administered the Mass Picketing statute in this way, that is, persons "bunched up" within 50 feet of each other were arrested. (App. 847)

On May 26, 1967, 14 pickets were arrested in two groups at Mission, Texas. They were charged with Unlawful Assembly (Pl. Ex. 720A) and later with Secondary Picketing and Boycott (Pl. Ex. 720B; 720C). The first group of 10 persons were arrested when they allegedly attempted to picket a train which carried produce. After the first 10 had been taken to jail, 4 others not present at the first arrest were likewise arrested and charged with Unlawful Assembly and then Secondary Picketing and Boycotting. The latter 4 were Reverend Edgar Krueger, his wife Magdaleno Dimas, and Douglas Adair. The dis-

trict court found that although the evidence was disputed as to whether the first 10 arrests were justified under the circumstances, it is clear that the second arrests were not. The district court also found that the persons arrested were roughly handled by the Rangers, and Reverend Krueger was advised that he should stop his picketing and strike activities since these were not consistent with his ministerial functions. (JS App. 44-46)

As to the first arrests, the defendant Rangers testified that the pickets were standing at the intersection of the main street of Mission, Texas, with the railroad tracks and thus were in position to physically block the train. As to the second group of four, the district court found that Reverend Krueger was arrested "at best" because he had asked to be arrested. Also, Reverend Krueger had been urging bystanders to resume picketing (after the train had passed) according to the Rangers. The district court also found that Mrs. Krueger was arrested either for taking a picture of her husband's arrest or attempting to strike defendant Ranger Captain Allee with her camera in defense of her husband. The district court found that none of the four had picket signs, or were picketing, or were physically blocking the railroad tracks. They were trying unsuccessfully to encourage bystanders to picket according to the Rangers. (JS App. 45-46) All four of them were booked at the jail for Unlawful Assembly. (App. 925-926).

The district court also found that the defendant Rangers arrested Reverend Krueger and Magdaleno Dimas and then took them to a passing train where they held the prisoners' bodies and faces only inches from the passing train. (JS App. 45)

On May 31, 1967, the Rangers arrested 13 persons for mass picketing in the woods at the west periphery of La Casita Farms. Ranger Captain Allee testified that he arrested these persons because they were gathered together in a group and thus were picketing in a forbidden manner in his sight and presence. Three of the pickets had moved southward along a country road to follow the work force as it moved through the field, but the other eight who were bothered by the heat waited with their cars under the shade of some trees with their signs put away. Captain Allee arrested the first three pickets and then directed that the eight others under the tree likewise be arrested for mass picketing. After all, they were bunched up under the tree. (J.S. 46-47)

On the night of June 1, 1967, Ranger Captain Allee with gun in hand conducted in Rio Grande City, Texas a conspicuous and terrifying man hunt for Magdaleno Dimas, a union supporter. The man hunt led to a private residence which Texas Rangers surrounded, then broke into after calling out the Justice of the Peace to issue a curbside search warrant. After breaking in, they administered a severe and merciless beating to Dimas and another. (J.S. App. 47-49)

The man hunt was conducted without known reason, without charges, and without warrant, but after Dimas was jailed, an official of La Casita Farms, defendant Jim Rochester, was called out in the night to file justifying charges. Dimas was charged with disturbing the peace at La Casita Farm Shed No. 1 by yelling, "Viva La Huelga." (Long live the strike). (Pl. Exhibit 7. 22D) and by rudely displaying a deadly weapon. (Pl. Exhibit 7. 22C). Other evidence established that during the daylight hours of the same day, Dimas had walked along the highway past La

Casita's packing shed with a hunting rifle in hand, returning from a bird hunt. (J.S. App. 47-49)

Also on June 1st three more union supporters picketing at the La Casita shed were arrested for mass picketing and secondary boycott. The charge of mass picketing was filed because they were three in number. The secondary boycott resulted from the fact the pickets were near the premises of the Missouri Pacific Railroad (the tracks which enter La Casita's shed), an employer which had no labor dispute with its employees. (Pl. Ex. 7.24B, 7.24C; App. 336-342)

Under this pressure, the Union's effort collapsed. So, on June 1, 1967, the Union announced that it would discontinue its organizing efforts and seek relief from the courts. This suit followed promptly. (J.S. App. 51-52)

All the above facts and many others were proved to the district court which was unanimous in making uncommonly strong fact findings. The evidence showed 8 cases of overt official partiality, 5 cases of manhandling by officers, 7 cases of unwarranted prosecution, 3 cases of bonding abuses, and 56 arrests for First Amendment activity, plus numerous dispersals of persons or interference with them where no charges were filed. Physical brutality was administered to at least 5 union leaders.

None of the pending prosecutions has ever been set for trial.

ARGUMENT

1. *Younger v. Harris* Tests are Satisfied.

The court below was clearly right that *Younger v. Harris* tests are satisfied and that injunctive and other

relief is appropriate. The argument of the Attorney General to the contrary is based upon his own recitation of claims that are apart from the fact findings and at war with the credited evidence. The district court's review of the harassment facts is at J.S. App. 34-35.

The district court's analysis of the record in light of *Younger* (J.S. App. 51-55) starts out with recognition that if the only danger to plaintiffs, real or imagined, is "chilling" of free expression incidental to the good faith prosecution of violations of state penal provisions (even unconstitutional statutes), *Younger* is not satisfied (J.S. App. 51).

The district court then proceeded to find irreparable injury in addition to bad-faith prosecution:

"The arrests, detentions without the filing of charges, seizures of signs, dispersals of pickets and demonstrators, the threats of further prosecutions if pro-union activities did not cease, the abuse of the bonding process, and the inducements offered by peace officers to strikers to return to work, disclose a pattern of action by local authorities designed to halt the strike and to discourage attempts to engage in constitutionally protected conduct in support of the strike. The union's efforts collapsed under this pressure in June of 1967 and this suit was filed in an effort to seek relief. Since that time the union has not engaged in organizational activities. To the extent that the farm workers were forced to abandon activity to better their lot which is protected by the First Amendment they have endured irreparable harm." (J.S. App. 51-52).

* * *

"Here, we find that these plaintiffs have met both of these tests in that they have established the existence of bad faith prosecutions as well as irreparable

injury to their own federally protected rights and those of their class. The bad faith on the part of the local authorities can be seen in facts set out above in Part II and in the discussion of 'irreparable injury' in this part. The authorities have prevented the plaintiffs from defending their conduct by causing crowds to be dispersed under threats of arrest, by arresting persons and then releasing them without filing charges, by abusing the bond system, by filing numerous charges against the plaintiffs, by refusing to file complaints made by the plaintiffs, by supporting a private anti-union newspaper, by the comments and threats made to union supporters in custody, union supporters seeking to file charges, union supporters on picket lines, and union supporters engaging in no activity whatsoever, and all for the purpose of breaking up the strike and preventing persons from advocating support for the strike and its principles. The policy authorities were openly hostile to the strike and individual strikers, and used their law enforcement powers to suppress the farm workers' strike." (J.S. App. 55.)

If this case does not satisfy *Younger*, no case can.

The Attorney General's indifference to the fact findings and to the official lawlessness behind them is fresh evidence that some of our state officials still do not wish to shoulder responsibility for the control of ugly law enforcement. The alleged misconduct attributed to farm workers is made practically from the whole cloth. Indeed, the district court found at J.S. App. p. 50 that the strongest evidence of an assault on anyone by the farm workers during the entire year was an attempt by one of them to reach through an open window of a passing truck to grab a nonstriker by the coat on December 28, 1966. Although it was claimed that property destruction and the burning

of a railroad bridge resulted from the strike, no evidence was presented specifically in this respect, and the district court so found. (J.S. App. 37-38)

Without purporting to whitewash the activities of the farm workers and their sympathizers, the district court found that the law officers stepped over the line of neutral law enforcement and entered the controversy on the employers' side. The law officers were found to have deliberately intended to break the strike and to prevent persons from supporting it by using their law enforcement powers to this end by instituting these prosecutions in bad faith and for the purpose of harassment (J.S. App. 51; 55)

2. Factual and Legal Setting of the Use of the Challenged Statutes.

Two of the challenged statutes are directed squarely at pure speech and pure assembly. These are Article 482, Abusive Language, and Article 439, Unlawful Assembly.

The mass picketing statute purports to regulate the place and manner of expression and of communicative conduct. Although its title refers to "picketing," its terms also apply to any form of "inducing or attempting to induce" and to efforts to "persuade."

Article 5154f, the secondary picketing, strike, and boycott statute, regulates communicative conduct as well as other conduct, as will be discussed hereafter.

We start out with the clearly demonstrated and stipulated legality under Texas law of plaintiffs' efforts to induce farm worker employees of the various growers to quit their employment and to make common cause with the union. Article 5153 of Vernon's Annotated Texas Statutes, Appendix, *infra*, p. 57, specifies that "It shall

be lawful" for union members "to induce or attempt to induce" by peaceful and lawful means any person "to refuse to enter any pursuit or to quit or relinquish any employment or pursuit in which such person may then be engaged."

The employer growers in this case exercised fully their right to induce employees to reject the union and continue to work. Clearly, then, in this ideological and economic contest the union and its supporters were entitled to use the full measure of their persuasive powers and organizational techniques so long as they did so peacefully and without threats or physical obstruction. Since they violated no state policy by their efforts, it is also clear that they were protected by the First Amendment in both speech and assembly.

The physical scene of this contest was the rural area of South Texas. The great farming operations conducted by the growers were substantial in size employing hundreds of farm workers especially during planting and harvesting periods. These farm workers were to a large extent hauled in from distant places by bus loads according to the stipulation. We do not have in this case the usual traffic problems of urban settings, nor sidewalks, nor narrow streets, nor other constricted locations which underpin a state interest in maintaining the free flow of pedestrian or automobile traffic in limited space.

Also, this case does not present excessively large gatherings of farm workers. The largest grouping disclosed by the evidence was composed of the 22 persons arrested on May 18, 1967, as they stood at the side of U.S. Highway 83. In this instance the testimony of the very arresting officer, defendant Ranger Captain Allee, established that these persons were located at the side

of the road, not near the Trophy Farms gate, and that these people were arrested solely because they stood around "all in a bunch." (App. 797-799; 847) It is a fair statement that the farm workers' assemblages were moderate in size and small, indeed, in comparison to the work force to which they directed their lawful inducements.

The district court found open hostility toward the union and partiality toward the growers on the part of the defendant peace officers who utilized threats, physical violence, and open anti-union solicitation along with their administration of the statutes challenged in this case. It was entirely natural and easy for the peace officers to use one or the other of the challenged statutes to supplement their partisan program by finding more than two persons standing within 50 feet of each other or by concluding that the union members' solicitations were either "loud and vociferous" or "foul" or they "disturbed" some other person in the exercise of his rights.

In every case, the selection of a particular statute as authority to arrest was entirely optional with the law officers. In fact, the Attorney General's Post Hearing Brief, parts of which are reproduced in the Single Appendix lodged in this Court, outlines the officers' options on each occasion as they arrested the farm workers.

The Attorney General advised the court:

1. As to October 12, 1966, when 25 farm workers were dispersed on U.S. Highway 83 adjacent to the Rancho Grande Farms, and William Chandler was arrested for disturbing the peace in violation of Article 474

"All persons present could have been charged with violation of Article 482, Abusive Language, viola-

tion of Articles 434 and 449, Unlawful Assembly. If charges had been under Articles 455, 464, 466 and under Article 468, all persons present would have been guilty of rioting as all would be guilty if anyone present performed an illegal act."

(Appendix, *infra*, pp. 57-58.)

2. As to January 26, 1967, when five union sympathizers were arrested for using abusive language on the banks of the Rio Grande River while soliciting employees of Trophy Farms to join the union

"... Plaintiffs could clearly have been charged under Article 482, Abusive Language; 439, 449, Unlawful Assembly; 455, 464, 466, 469, rioting statutes; and 5154(d), V.C.S. [mass picketing]."

(Appendix, *infra*, p. 58.)

3. As to January 26, 1967, when Reverend James Drake and Gilbert Padilla were arrested for Unlawful Assembly on account of praying on the courthouse steps, the Attorney General advised the court that:

"... the entire crowd could have been arrested and charged with unlawful assembly under the P.C., Articles 439, 449; for Rioting, P.C., Articles 455, 466, for Disturbing the Peace, P.C., Article 482, Abusive Language."

(Appendix, *infra*, p. 58.)

4. As to February 1, 1966, when five Catholic priests were arrested for disturbing the peace because of standing on the Bazan property and soliciting La Casita workers to join the union, the Attorney General advised the court that:

"... everyone present could have been charged with violation of Article 5154(d), Mass Picketing, with Articles 439 and 449, Unlawful Assembly; and possibly under Article 482, Abusive Language, as Father Smith stated that they were calling the workers 'scab' in Spanish in attempting to use the word that has 'punch to it and an edge to it.'"

(Appendix, *infra*, p. 58.)

5. As to May 11, 1967, when Ismael Diaz was arrested for not having a driver's license, the Attorney General, noting a Ranger's testimony that Diaz was speeding up and passing a bus containing farm workers and then slowing it down so that the bus could not proceed freely, advised the court that:

"... A valid charge of Unlawful Assembly, Articles 439 and 449 or Rioting, Article 455 and 464 could have been filed against all persons in the car."

(Appendix, *infra*, p. 59.)

6. As to May 18, 1967, when about 22 pickets were arrested at the side of U.S. Highway 83 for mass picketing because they stood around "all in a bunch," the Attorney General advised the court that:

"Charges could have likewise been filed for rioting and unlawful assembly."

(Appendix, *infra*, p. 59.)

7. As to the arrests on May 26, 1967, of 14 pickets in 2 groups, the Attorney General advised the court that:

"At the time and place in question both those initially arrested and those arrested in the secondary

group were clearly guilty of Unlawful Assembly under Articles 439 and 449 of the Penal Code and of Rioting under Articles 455, 464, and 466. . . . It is interesting to note that in spite of protestations of innocence, each of the persons arrested had participated in the union activity, were away from their homes with the intention of aiding and lending support to the unlawful assembly and riot at Mission, Texas. It is immaterial under State law whether or not they were actually standing on the railroad tracks themselves or merely near to the tracks or even if they were somewhere else if they were or had been a part of this unlawful assembly."

(Appendix, *infra*, p. 59.)

8. As to May 31, 1967, when 13 persons on the Solis property were arrested for mass picketing, 10 of them because they were bunched up under the shade of a tree, the Attorney General advised the court that:

" . . . In addition on this occasion, participants could have been charged with violation of Articles 439, 449, Unlawful Assembly; Articles 474, Disturbing the Peace; and Article 482, Abusive Language, Articles 455, 464, or 466 of the rioting statute."

(Appendix, *infra*, p. 59.)

Coming as they did from the Attorney General of Texas after full trial on the merits, the foregoing comments illustrate the hapless position of the plaintiff farm workers union and its supporters. Knowing the hostility of the defendant officers and the extent of the official lawlessness to which they were willing to resort, plaintiffs had no alternative except to challenge the statutes which the defendant law officers had used because they were susceptible to misuse.

There is no element of precipitate challenge by these plaintiffs nor precipitate adjudication of facial unconstitutionality by the district court. Plaintiffs were set upon and harassed for one long year, the entire duration of their organizing effort, and were dispersed or arrested and charged (but never tried) under the statutes here challenged. Whatever hesitation the Supreme Court may feel in the average case where a declaration of facial unconstitutionality is requested, this is a case where this Court is not called upon to make judicial prediction or judicial assumption that these statutes' very existence may cause persons not before the Court to refrain from constitutionally protected speech or expression. This is a case in which it is a proven fact that these statutes in the hands of hostile law officers were actually used to frustrate constitutionally protected speech and assembly to a degree that the union's organizing efforts were crushed.

In this respect, this particular case vindicates the Supreme Court's special concern for the protection of First Amendment rights. By their manipulation of the challenged statutes and their other conduct the defendant officers deprived the plaintiffs of their power of cohesion. The right of every individual to speak and meet requires not only opportunity for him but also freedom of others to hear or join with him without fear. (J.S. App. 53)

3. Mass Picketing Statute.

Section 1 of Article 5154(d) uses the term "mass picketing," but this is another of those mere labels of state law" which tends to disguise interference with innocent First Amendment communication and association.

New York Times v. Sullivan, 376 U.S. 254, 269 (1964). Far from addressing itself to "mass" assembly of persons, it specifies that in every case persons who communicate by picketing or who assemble to induce must not "at any time" permit themselves to be closer to each other than two every fifty feet. This applies to every time and every place and without consideration of the surrounding physical conditions or the size and nature of the target operations. The statutory terms "picket" and "picketing" include every person who acts for an organization who is present for the purpose of inducement, observation, or persuasion.

This numbers and distance formula is thus not limited to those who carry picket signs but includes everyone who has a sufficient interest in the matter to be present to see what is going on.

The statute also applies its formula everywhere in the state including both public and private property, and it was so enforced in this case.

The bare fact of the physical presence of more than two persons within fifty feet violates the statute without reference to actual obstruction, whether reasonable or unreasonable, and the statute was so applied to these farm workers. Defendant Ranger Captain Allee testified that this was the policy of enforcement applicable to all cases.

Violation of the statute by any individual is punishable by a fine of \$25 to \$500 or imprisonment up to 90 days, or both. "Each separate act of violation shall constitute a separate offense."

True, reasonable regulations as to time, place, and manner for expressive activity are constitutionally appro-

appropriate even under the First Amendment, but "The nature of a place, 'the pattern of its normal activities, dictates the kinds of regulations of time, place, and manner that are reasonable.'" *Grayned v. City of Rockford*, 408 U.S. 104 (1972). In *Grayned* this Court said:

"The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time. Our cases make clear that in assessing the reasonableness of regulation, we must weigh heavily the fact that communication is involved; the regulation must be narrowly tailored to further the State's legitimate interest."

We will not burden this Court with the engaging speculation as to which of three persons is the guilty one if the three are found within a space of fifty feet. This and other absurd questions realistically arise under the statute. And because of the limitless reach of the statute and its application to all interested persons in the vicinity, we have come in this case to the absurdity of the arrest of 10 farm workers as they lolled in the shade of a tree in the woods and another 22 because they were bunched up on the side of the road on U.S. Highway 83, all without reference to any actual obstruction of anyone.

Human beings are gregarious by nature. Gathering together in moderate numbers and working together cooperatively, they can and do inspire and strengthen each other and induce confidence in those whom they solicit to join. Every political candidate knows that a good crowd at a rally or in a parade will help him look like a winner. There is no rational reason of legitimate state interest why union supporters pursuing a lawful objective

of solicitation must be mandatorially spaced out in every case to satisfy this statutory formula.

In terms of the "crucial question" posed in *Grayned*, the peaceful expression of their views by these farm workers assembled in numbers of more than two every fifty feet is not basically incompatible with any legitimate protection which the growers may demand or the state may bestow. To the contrary, the imposition of the numbers and distance formula of the statute in this case debases and impairs the credibility of the union's efforts and unfairly tips the scales of persuasion against one side of the controversy.

Many other cases can be visualized where the same unfair result would follow. To be sure, cases can also be visualized where a limitation of pickets to two every fifty feet might be appropriate. The vice in this statute is its over-breadth in providing a restrictive mechanical formula to fit all situations.

The second respect in which the statute is unconstitutional is its violation of the Equal Protection Clause of the Fourteenth Amendment. The offense of mass picketing can only be committed by pickets or persons who are "stationed by or act for or in behalf of any organization." The statutory definitions of "picket" and "picketing" make it clear that persons who are not stationed by or acting for or in behalf of an "organization" may gather and picket without reference to the numbers and distance or the obstruction formula of Article 5154(d). Both the 50-foot phase and the obstruction phase of the statute incorporate these statutory definitions:

"The term 'picket' as used in this Act shall include any persons *stationed by or acting for and in*

behalf of any organization for the purpose of inducing, or attempting to induce, anyone not to enter the premises in question or to observe the premises so as to ascertain who enters or patronizes the same . . ." etc. (Emphasis added)

"The term 'picketing,' as used in this Act, shall include the stationing or posting of one's persons or of others *for and in behalf of any organization* to induce anyone not to enter the premises in question, or to observe so as to ascertain who enters . . ." etc. (Emphasis added)

A similar distinction in the regulation of the place and manner picketing was recently declared invalid. *Police Department of City of Chicago v. Mosley*, 408 U.S. 92 (1972); *Grayned v. City of Rockford*, 408 U.S. 104 (1972). In *Mosley* the court held it to be unconstitutional under the Equal Protection Clause to outlaw all picketing within 150 feet of the school, except labor picketing. The reasoning of *Mosely* is fully applicable here. Discrimination among pickets which is based on whether they represent an organization is no more "tailored to a substantial government interest," 408 U.S. at p. 102, than discrimination based upon "the contents of their expression." *Id.* Indeed, *the* distinction which the statute draws penalizes "the right of individuals to associate to further their personal beliefs." *Healy v. James*, 408 U.S. 169, 181 (1972). Also rejected in *Mosley* was a state argument to the effect that non-labor picketing, as a class, is more prone to produce violence than labor picketing. The court responded that the Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to legitimate objectives and that abuse of picketing must be dealt

with even-handedly regardless of the subject matter of the picketing.

The constitutionality of the Article 5154(f) was challenged on this ground by plaintiffs by pleading and by pretrial memorandum. The district court did not specifically mention this phase of the case, no doubt because the decision below was handed down on the same day that the Supreme Court decided *Mosley* and *Grayned* on June 26, 1972. Nevertheless, the unconstitutionality of the statute on this ground is clear.

If the Supreme Court sustains the Equal Protection argument and the applicability of the *Grayned* and *Mosley* decisions, *supra*, the point is also applicable to the prohibition of "any character of obstruction" phase of the statute. Mass picketing is defined to include any form of picketing which constitutes or forms "any character of obstacle" by obstructing free ingress or egress by the persons of the pickets. The District Court construed the statute to mean "once a picket comes within the statutory definition, it does not matter whether the picketing is a reasonable or unreasonable obstacle to access, it is forbidden. The statute does not permit the courts to relax its strictures and decline to issue injunctions where picketing does not present an unreasonable barrier to access." (J.S. App. 63). On the other hand, the Attorney General, at pages 24 and 25 of Appellants' Brief, construes the statute to apply only to "actual physical obstruction." In this respect, the Attorney General says, the Texas statute is more narrow than the statute upheld by this Court in *Cameron v. Johnson*, 390 U.S. 611 (1968), which involved a Mississippi statute which prohibited picketing "in such a manner as to obstruct

or unreasonably interfere with free ingress or egress . . .” to the courthouse or other public buildings.

Appellees readily concede under the authority of *Cameron v. Johnson* that the Texas statute would not be overbroad if it were construed to prohibit obstacles which are unreasonable. Such a construction of this particular statute would probably be an excessive indulgence, however, since the statute also prohibits pickets in excess of two every 50 feet without reference to the existence of any kind of obstacle, reasonable or unreasonable, and without reference to the reasonableness of the interference which results from the presence of the pickets. It was actually so applied in this case by the arrests in the woods and on the side of a public highway.

Every street intersection is the scene of continual interference and obstruction between pedestrians and automobile drivers who momentarily obstruct each other on sidewalk and street long enough to move on. No one would term this temporary blocking to be unreasonable. Just so, peaceful pickets and persons moving in and out of picketed premises will inevitably need to accommodate for each other and momentary obstruction or trivial interference as one or the other moves out of the way is not unreasonable.

This was the exact situation before the Supreme Court in *Cameron v. Johnson*, *supra*. In Footnotes 1 and 4 of the dissenting opinion of Mr. Justice Fortas there is a description of this trivial interference which might occur from the presence of pickets at a point of access to premises. We understand that the Mississippi statute was upheld because it prevented “unreasonable” interference and not because Mississippi could lawfully prohibit peaceful picketing which has only trivial effect in terms of

interference. ". . . this statute does not prohibit picketing . . . unless engaged in in a manner which obstructs or unreasonably interferes with ingress or egress to or from the courthouse." 390 U.S. p. 617.

In this connection, the District Court upheld the constitutionality of Article 784 of the Texas Penal Code which prohibits obstructing public streets (J.S. App. 64-65). The court considered the word "obstruct" in that statute to mean an actual prevention or substantial interference with traffic.

The Supreme Court is respectfully referred to the four exhibits reproduced at pages 18 and 19 of Appellees' Motion to Affirm. The exhibits there show the actual rural scenes where the picketing took place in this case and where arrests were made. Exhibits 7.17F and 7.18L are pictures taken by the Texas Rangers themselves at the scene where they administered the Mass Picketing statute by arrests.

4. Unlawful Assembly Statute.

The district court's demonstration of the unconstitutionality of Texas Penal Code Article 439, the Unlawful Assembly statute, is at J.S. App. 74-77.

At pp. 33-37 of Appellant's Brief is Appellants' argument in support of this statute, which is somewhat inept because it seems to say that Article 439 cannot stand alone. It can, however, by the express provisions of Texas Penal Code Article 452 which is set out below. In any case, the district court assumed for purposes of discussion that the "right" to be protected from deprivation or disturbance is one which the State may legitimately protect (J.S. App. 75).

Article 439 of the Texas Penal Code, Unlawful Assembly, provides as follows:

An "unlawful assembly" is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof.

Article 452 provides:

If the purpose of the unlawful assembly be to effect any illegal object other than those mentioned in the preceding articles of this chapter, all persons engaged therein shall be fined not more than two hundred dollars.

This ancient statute, enacted in 1879, is not "directed to inciting or producing imminent lawless action" by advocacy but also encompasses (1) guilt by association, (2) abstract advocacy, (3) intent to aid "in any manner" the deprivation of any person of any right illegally, and (4) finally, the intent to aid in any manner the disturbance of any person in the enjoyment of any right.

The statute does not square with First Amendment protection of the right of assembly. *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Healy v. James*, 408 U.S. 169 (1972).

Texas courts have not limited the statute to hard core or lawless action. For example, in *Briscoe v. State*, 341 S.W.2d 432 (1961), the court held that the indictment should specify whether the offense involved an intent to use violence to disturb the victim or whether it involved an intent to use means other than violence to disturb the victim in his rights.

Interestingly, Appellants' Brief at page 34 makes the following statement:

"Thus this portion of the statute makes criminal a conspiracy to do something that the law of the State, including the civil statutes and the common law, prohibits."

Literally, the statute does, indeed, define Unlawful Assembly to include an intent of three or more people to aid each other to disturb some person in the enjoyment of one of his common law rights.

Concerted peaceful activities are protected by the First Amendment even if they do "disturb" others in the enjoyment of their rights. In *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971), this Court reversed an Illinois injunction in favor of a real estate broker against irate citizens who vigorously advertised and condemned the broker's business practices in the area of "block busting." The opinion of Chief Justice Burger, 402 U.S. at 419, said:

"... In sustaining the injunction, however, the Appellate Court was apparently of the view that petitioners' purpose in distributing their literature was not to inform the public, but to 'force' respondent to sign a no-solicitation agreement. The claim that the expressions were intended to exercise a coercive impact on respondents does not remove them from the reach of the First Amendment. Petitioners plainly intended to influence respondent's conduct by their activities; this is not fundamentally different from the function of a newspaper. See *Schneider v. State*, *supra*; *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940). Petitioners were engaged openly and vigorously in making the

public aware of respondent's real estate practices. Those practices were offensive to them, as the views and practices of petitioners are no doubt offensive to others. But so long as the means are peaceful, the communication need not meet standards of acceptability."

It goes without saying under this and other authority that peaceful assembly to protest or change the practices of others may not be prohibited on the sole ground that they do disturb the enjoyment of rights by these others.

In this case Reverend James Drake and Gilbert Padilla were arrested for unlawful assembly for praying on the courthouse steps on January 26, 1967. It was stipulated that the courthouse property had been used in the past for nighttime rallies of politicians and for dances. No Texas statute prohibited the presence of these men at the scene of their prayers. The disturbance of the "right" of another is easy to supply—perhaps the right of a janitor, a jailer, or an atheist enjoying his peace on the grounds.

Again on May 26, 1967, ten union sympathizers at one time and four other union sympathizers at a later time were arrested for unlawful assembly on the main street of Mission, Texas. The first group of ten had the intent to aid each other in picketing although the picketing had not started. The second group of four arrived later with the intent to aid the first ten, although the first ten had already been taken to jail. The "offense" or the "disturbance of a right" could be supplied by the Texas secondary boycott statute. That statute makes it a crime for any two persons to plan to cause injury to another "by picketing." Or, the offense could be supplied by an-

other provision of that statute which prohibits the plan of any two persons to cause injury to another by interfering with the free flow of commerce.

Again on February 1, 1967, five Catholic priests assembled in a wooded area on private property adjacent to La Casita Farms. There they solicited the workers in the field to join the union and were promptly arrested for disturbing the peace. As pointed out, the Attorney General of Texas advised the court in its post-trial memorandum that "everyone present could have been charged with the violation of Article 5154(d), mass picketing, with Articles 439 and 449, unlawful assembly, and possibly under Article 483, abusive language, as Father Smith stated that they were calling the workers 'scab' in Spanish in attempting to use the word that has punch to it and an edge on it." (See Appendix, *infra*, p. 38)

This unlawful assembly statute in addition to its overbreadth lends itself to all manner of unpredictable and selective enforcement as the Attorney General clearly demonstrated to the district court. (See pp. 25 et seq., *supra*.)

5. Abusive Language Statute.

The district court's demonstration of the unconstitutionality of Texas Penal Code Article 482 is at J.S. App. 72-74. The statute provides:

"Any person who shall in the presence or hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace shall be fined not more than one hundred dollars."

In all material respects this statute is identical to the Georgia statute in *Gooding v. Wilson*, 405 U.S. 518 (1972).

At Footnote 22 (J.S. App. p. 83) the district court reviewed Texas decisions to show that this statute has not been limited to the kind of "fighting words" contemplated by *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). Appellants' Brief does not even address itself to the cases discussed in Footnote 22 (J.S. App. 22).

The constitutional posture of these plaintiffs is far superior, however, to that of the defendant in *Gooding v. Wilson*, *supra*. In this case on January 26, 1967, five farm workers standing on the banks of the Rio Grande River were addressing themselves to a large number of workers in the fields by means of a loudspeaker. Deputy Sheriff Roberto Pena arrested all five for abusive language and confiscated their loudspeaker until the next day.

We do not have here the individual, face-to-face delivery of severely insulting language which *Chaplinsky* contemplates. To the contrary, there was distance and also the impersonal aspect stemming from the group attitude of the union supporters on the one hand in contrast to the group indifference or rejection of their cause by the workers on the other.

The Texas court applies the abusive language statute in cases other than direct personal abuse by one person to another of a provocative kind which will likely provoke a breach of the peace in the circumstances. In addition to the cases cited in Footnote 22 of the district court's opinion, the Texas court has held that the abusive language statute was violated when the defendant on his own premises shouted to someone in his house: "Call Mitchell,

these god damned bastards got guns." These remarks were not even addressed to the two law officers referred to who were crouched behind vehicles parked in the defendant's driveway. *Duke v. State*, 328 S.W.2d 189 (1959). Under this interpretation, the statute is violated even though the person referred to would not commit a responsive breach of the peace because of official position and responsibility. As in *Gooding v. Wilson*, *supra*, this leaves the standard of guilt to the creation of the trier of fact in each case.

The Texas Abusive Language Statute is a natural implement for hostile law officers to utilize oppressively in the group animosities which inhere in labor disputes. Unfriendly law officers can be quick to conclude that the persuasions, arguments and appellations of the union supporters are "abusive" to a degree which might be reasonably calculated to provoke a responsive breach of the peace by the nonstrikers. As previously pointed out, at or about the same time one of five Catholic priests used the Spanish word "esquirol" which literally means "squirrel" but is the general equivalent of the English word "scab" in the context of a labor dispute. The Attorney General expressly advised the Court that the abusive language statute was violated by the use of this word on the occasion in question. (*Supra*, p. 27.)

6. Secondary Strike and Boycott Statute.

Under Article 5154f, defendant officers performed the following arrests:

1. 10 persons arrested and charged with aiding and abetting a strike of two members of a train crew on November 3, 1966, by picketing on a public highway adjacent to a La Casita Farms shed.

2. 14 persons arrested in two groups at Mission, Texas, on May 26, 1967, and charged with secondary picketing and secondary boycott on account of picketing at the intersection of Conway Street, the main street of Mission, Texas, and a Missouri Pacific Railroad track.

3. 4 persons arrested on June 1, 1967, for secondary picketing near the intersection of the Missouri Pacific Railroad track and Conway street in Mission, Texas.

4. 3 persons arrested on May 31, 1967, for secondary picketing on a public road adjacent to a La Casita shed (the same location as the first 10 arrests).

Article 5154f was substantially invalidated on constitutional grounds by a long series of Texas cases which culminated in the decision of the Texas Supreme Court in *Dallas General Drivers v. Wamix*, 295 S.W.2d 873 (1956). The manipulation by the defendant law officers of this invalidated statute was and is the hallmark of bad faith arrests and charges. Appellees submit that the 10 arrests for picketing on November 3, 1966, and the 3 arrests for picketing on June 1, 1967, were inexcusable and substantially support the other proof of harassment presented by plaintiffs.

Article 5154f prohibits (1) secondary picketing, (2) secondary striking, and (3) secondary boycott. The constitutional difficulty with the secondary picketing and secondary striking provisions is their artificial, mechanical, and over-broad proscription of peaceful picketing and other legitimate activities. In both cases the statute requires a "labor dispute" as a condition of legality. The term "labor dispute" requires a controversy between an employer and the majority of his employees.

Accordingly, the secondary picketing provision prohibits peaceful picketing for perfectly lawful purposes if

the picketers are fewer in number than a majority of the employer's employees. This provision was declared unconstitutional in several decisions of the Texas Supreme Court. *Ex parte Henry*, 215 S.W.2d 588 (1948); *I.U.O.E. v. Cox*, 219 S.W.2d 787 (1949); and *General Labor Union v. Stephenson*, 225 S.W.2d 958 (1950). In these cases the Texas Supreme Court held squarely that peaceful primary picketing for a lawful purpose is constitutionally privileged even though only a minority of the employer's employees may engage in the picketing. The court also held squarely that it was a constitutional privilege of such picketers to endeavor to enlist the sympathy of others and to induce them not to cross their picket line. Indeed, in *Ex parte Henry*, the primary picketing caused a railroad crew to decline to operate their train into the picketed premises. In so many words the court held at 215 S.W.2d, p. 595:

"In this connection, it seems to be the position of respondents that since the employees of the railways would not cross the picket line manned by relators, the picketing and the consequent refusal of the railway employees to serve the employer's plant constituted such concerted action between relators and those employees as to amount to *secondary picketing and boycotting* and conspiracy in restraint of trade, *as denounced by our statutes*. Under the decisions of the Supreme Court already cited and discussed, picketing does not offend against the statutes merely because third parties who come to the area of the dispute may prove sympathetic to one disputant rather than to the other. We overrule the point." (Emphasis added)

This was the clear and undoubted state of the law as to secondary picketing and secondary boycott phases of

Article 5154f from 1948 until the defendant officers filed their criminal charges on November 9, 1966, in an effort to harass these farm workers in their peaceful primary picketing which was strictly consonant with Texas public policy. As stated, the secondary picketing provision of Article 5154f had already been declared unconstitutional in the cited cases. In an effort to circumvent these decisions, defendants arrested and charged the farm workers with aiding and abetting a "secondary strike."

The statute says that a lawful secondary strike requires a dispute which involves a majority of an employer's employees. When two employees of the Missouri Pacific Railroad respected the picket line as they approached the La Casita shed they committed the offense of "secondary strike" in that "no labor dispute" existed between Missouri Pacific and its employees. In short, these two employees were not a majority of the railroad's employees and neither was the labor dispute their own.

So, the farm workers were arrested and charged with aiding and abetting a secondary strike by the two members of the railroad crew (although, of course, the latter were not charged with anything).

As interpreted and applied by the defendant peace officers, the secondary striking provision of Article 5154f is clearly unconstitutional as the cited Texas cases demonstrate. Although the literal language of the statute justifies the arrest, only the most perversely partisan officials would try to evade the constitutional principle declared by the Texas Supreme Court that lawful primary picketing does not become unlawful merely because third parties who come to the area of the dispute may prove sympathetic to one disputant rather than the other.

This brings us to the secondary boycott phase of the statute which was invoked against 14 persons at Mission, Texas, on May 26, 1967.

The secondary boycott section prohibits any person from "aiding or abetting" a secondary boycott. In turn, a secondary boycott includes any combination, plan, agreement, or compact entered into or any concerted action by two or more persons "to cause injury or damage" "to another for whom they are not employees by:

1. Withholding patronage, labor or other beneficial business intercourse.

2. Picketing.

* * *

4. Instigating or fomenting a strike.

5. Interfering with or attempting to prevent the free flow of commerce.

6. By any other means attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute.

The Texas bible of secondary picketing and boycott law is another decision of the Texas Supreme Court, *Dallas General Drivers v. Wamix*, 295 S.W.2d 873 (1956). In that case the Texas Supreme Court upheld the legality of ambulatory picketing in certain circumstances. It also laid down the public policy of Texas relative to picketing which affects neutrals or causes employees of neutral employers to cease work. In that case Wamix employees followed their employer's concrete hauler and mixer trucks to the premises of various construction companies and by their picketing caused employees of neutral employers to engage in work stoppages.

Two lower courts had relied upon Article 5154f to enjoin the ambulatory picketing. The Texas Supreme Court, however, declined to accept these holdings. To the contrary, it said concerning Article 5154f the following:

"Insofar as that article seeks to interdict picketing of all employers except those with whom a labor dispute exists on the part of their own employees, it offends against the Fourteenth Amendment and is unconstitutional. *Construction and General Labor Union v. Stephenson*, 148 Tex. 434, 225 S.W.2d 958; *American Federation of Labor v. Swing*, 312 U.S. 321, 61 S.Ct. 568, 85 L.Ed. 855. If picketing cannot be limited to an employer who has a labor dispute with his employees it necessarily cannot be limited to the premises of an employer."

Turning its back on the statute, therefore, the court then went to the common law to determine if the picketing of *Wamix* trucks was an incident of a secondary boycott at common law, whether it could be enjoined as such, and, finally, under what circumstances. The conclusion of the Texas court was stated at 295 S.W.2d at 884 as follows:

"From the foregoing discussion we conclude that while secondary picketing as defined in *Cain, Brogden & Cain v. Local Union No. 47*, etc., supra, is contrary to the public policy of this state and subject to judicial restraint, not all picketing which has a secondary effect will be regarded as proscribed by the public policy; that two important factors in determining whether picketing in a particular case because of its secondary effect on neutral employers is proscribed by the public policy are: (a) the good faith intent of the union or striking employees in picketing a secondary situs to exert pressure only on the primary employer, to which effort the effect on neutral employers is purely incidental, and (b) the

balancing of relative rights of all affected parties against the harm which would result to the other parties and to the public from permitting or restraining the picketing. In a hearing on a temporary injunction these matters will ordinarily address themselves to the sound discretion of the trial judge and only rarely may the issue be decided as a law question. If the Court concludes, upon evidence of probative force, that the real purpose of picketing at a secondary situs is to exert economic pressure on a neutral and it has that effect there will be no need to consider the second factor."

One of the fact findings in *Wamix* was that the ambulatory picketing was conducted for the purpose of compelling the customers of *Wamix* to cease doing business with it. Another finding was that the union's purpose was to induce employees of neutral employers to cease work and thereby to exert coercive pressure on neutral employers. 295 S.W.2d at 884. On this phase of the case the Texas court expressly refused to hold that all picketing which results in incidental pressure on and harm to a neutral may be enjoined. It also refused to hold that neutrals must be protected from the harmful effects of picketing in all instances and under all circumstances. 295 S.W.2d at 882. Accordingly, the public policy of Texas does not prohibit all ambulatory picketing, and it does not invalidate all picketing which causes harm or damage to a neutral. The critical test is, first, whether the union's purpose to exert pressure is directed to the primary employer and, secondly, it turns on a balancing of the relative rights of each affected party against harm or damage to the other party and to the public from permitting or restraining the picketing.

Wamix was not an isolated case. It was the studied culmination of a substantial line of Texas Supreme Court

cases which found Article 5154f a square peg for a round hole.

Cain, Brogden & Cain v. Local Union No. 47, 285 S.W. 2d 942 (1956);

General Labor Union v. Stephenson, 225 S.W.2d 958 (1950), *supra*;

I.U.O.E. v. Cox, 219 S.W.2d 787 (1949), *supra*;

Ex parte Henry, 215 S.W.2d 588 (1948), *supra*.

As to both secondary picketing and secondary boycott, Courts of Civil Appeals had reached the same result in a variety of secondary situations: *Missouri-Pacific Freight Transport Co. v. International Brotherhood of Teamsters*, 220 S.W.2d 219, ref. n.r.e.; *Texas State Optical Co. v. Optical Workers Union*, 257 S.W.2d 493, 500, ref. n.r.e.; *Teamsters v. Cain, Brogden & Cain*, 272 S.W.2d 544, reversed on common law grounds only, 285 S.W.2d 942, *supra*.

On the other hand, where the secondary boycott phase of 5154f (Section 2,e) was upheld and applied by a Court of Civil Appeals, *Construction Union v. Stephenson*, 221 S.W.2d 375, the Texas Supreme Court pointedly and expressly declined to affirm on the basis of this section. It modified and affirmed an injunction on other and quite different grounds. *General Labor Union v. Stephenson*, 225 S.W.2d 958, *supra*.

Also, *Wamix* resorted to the common law and avoided reliance upon the statute even though a recent white horse case by the Dallas Court of Civil Appeals had applied Article 5154f to ambulatory picketing of concrete trucks. *General Drivers, etc. v. Dallas County Const. Employers' Assn.*, 246 S.W.2d 677 (1951), ref. n.r.e. The latter case

was a 2-1 decision upholding the constitutionality and application of the secondary boycott and secondary picketing sections of Article 5154f to a fact situation identical to *Wamix*. While the Texas Supreme Court simply ignored the earlier case in its opinion, there is no doubt that *Wamix* is a studied refusal to accept the holding of the earlier case which, incidentally, also involved, in part, picketing at the same Wamix Company in Dallas. In both cases the same union counsel participated.

We have belabored the Texas cases for the purpose of demonstrating to this Court that Texas courts have clearly declined to perform plastic surgery on Article 5154f or to limit or construe its literal language in ways which will conform to First Amendment principles. Rather, the Texas courts have accepted the fact that the artificial and mechanical tests of the statute are fatal as written. They have reverted, therefore, to common law principles of secondary boycott so as to regulate undesirable activity by a nice balancing process in the equity court.

It is not the function of this Supreme Court of the United States to make or anticipate adjustments in the construction of state statutes when it is clearly demonstrated that state courts have adopted a different course of adjudication. State courts are as free to discard their over-broad statutes as they are to preserve them through plastic surgery.

The dragnet provisions of the secondary boycott phase of Article 5154f cannot exist contemporaneously with the *Wamix* decision. The refusal of the *Wamix* court to follow the earlier application of the secondary boycott phase of Article 5154f by the Dallas Court of Civil Appeals in an identical fact situation was striking. The same sharp refusal had occurred earlier in the *Stephenson* case, *supra*,

where the intermediate appellate court had rested its decision squarely upon the same provision.

The statute prohibits any person from "aiding or abetting" a secondary boycott. It then defines a secondary boycott to include every plan or concert of action by two or more persons to cause injury or damage to any other person for whom they are not employees by various methods.

Subparagraph (2) (the most conspicuously absurd provision) literally specifies the method of "picketing." This provision literally outlaws all picketing which may cause harm to another regardless of the circumstances or the purpose of picketing. This is *Thornhill*.

Subparagraph (1) literally specifies any plan to withhold patronage, labor or other beneficial business intercourse is unlawful (regardless of circumstance or motive). This literally means that if two persons act together to respect a picket line they commit a secondary boycott, and the picketer would be guilty of aiding and abetting them.

Subparagraph (3) was not ruled upon or involved in this case.

Subparagraph (4) literally specifies any plan by two or more persons to cause injury to another by instigating or fomenting a strike is illegal (regardless of circumstances or motive). This means that two pickets acting together commit secondary boycott if they induce another not to cross their primary picket line or if they induce other primary employees to join them and thereby harm or damage the other employer.

Subparagraph (5) specifies any plan of two persons to cause injury to another by interfering with the free flow

of commerce is illegal (without reference to the circumstances or motive). This means that any two pickets commit secondary boycott if their primary picketing induces others not to deliver or trade through the picket line.

Subparagraph (6) specifies "any other means" of causing or attempting to cause one employer to inflict damage to another (without reference to circumstances or motive). Literally this prohibits two pickets from peacefully soliciting an employer not to cross a picket line to make deliveries to another employer.

In all cases, any degree of injury or harm, however slight, suffices to make the provision applicable. These dragnet terms do not square with the reasonable precision of regulation which is the touchstone in the First Amendment area. In Subparagraph 2 the statute aims expressly at picketing and in other provisions it aims directly at the traditional inducements and persuasions which flow from picketing.

With these statutory provisions and the Texas decisions before it, the District Court correctly concluded that the statute makes irrelevant the purpose of the picketing and in sweeping terms simply prohibits anyone from aiding in harming another. Also correctly, the District Court found the statute unconstitutional under the principles enunciated in *International Brotherhood of Teamsters v. Vogt*, 354 U.S. 284 (1957). Although there is a broad field in which a state may prohibit picketing with a purpose of violating some public policy, it may not prohibit picketing for no reason at all other than the fact that public responses to that picketing may harm someone.

In the very last paragraph of the *Vogt* opinion the Supreme Court reminded again (354 U.S. pp. 294-295):

"Of course, the mere fact that there is 'picketing' does not automatically justify its restraint without an investigation into its conduct and purposes. State courts, no more than state legislatures, can enact blanket prohibitions against picketing. *Thornhill v. Alabama* and *A.F.L. v. Swing*, *supra*. In this case, the circumstances set forth in the opinion of the Wisconsin Supreme Court afford a rational basis for the inference it drew concerning the purpose of the picketing. No question was raised here concerning the breadth of the injunction, but of course its terms must be read in the light of the opinion of the Wisconsin Supreme Court, which justified it on the ground that the picketing was for the purpose of coercing the employer to coerce his employees."

Fitting in with the principles of *Vogt* is *Organization for a Better Austin v. Keefe*, *supra*. "The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment." 402 U.S. at 419. Under these authorities, the dragnet provisions of the Secondary Boycott phase of Article 5154(f) cannot stand since they prohibit solely because there is damage or harm without reference to the purposes or circumstances which may be involved in the case.

Of course, the Supreme Court will understand that the judgment in this case does not alter the law of Texas as to secondary picketing, secondary striking, or secondary boycott. It merely stops the defendant officers from arresting under this obsolete and invalidated statute.

Plaintiffs did not ask for much in this instance. *Wamix* is a demanding decision, the virtue of which is not that it freely allows secondary pressures but that it provides for hearings and for balancing to be done by equity courts to protect all parties and the public. The real relief which

plaintiffs obtained was rescue from erratic arrests and prosecution at the hands of unfriendly law officers.

Any public official who desires to seek an elucidating and limiting construction to revive and save portions of Article 5154f can institute suit for injunction under Section 5 of Article 5154f. So can any private party under Section 4.

Also, we may surmise that the Texas Supreme Court might have reshaped the statute by limiting construction or by plastic surgery. As the matter now stands, however, we have here a case of a generalized over-broad statute applied to a constitutionally protected situation. "[A] generally worded statute which is construed to punish conduct which cannot constitutionally be punished is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between constitutionally permissible and constitutionally impermissible applications of the statute." *Wright v. Georgia*, 373 U.S. 284, 292 (1963).

In the much respected, often cited article by Professor Amsterdam in 109 Pa. L.R. 67 (1960) the point is made that withdrawal by a state court under an over-broad statute to the line of absolute constitutional prohibition does not satisfy either the requirement of fair warning or the need for tolerance in the Bill of Rights area. 109 Penn. L.R. p. 80. Amsterdam referred to two illustrative cases, *Smith v. Cahoon*, 283 U.S. 553 (1931) and *Herndon v. Lowery*, 301 U.S. 242 (1937). In the former case, Florida enacted a regulatory scheme to cover all truckers, private and common, but not all of its many aspects could constitutionally cover private carriers. When the constitutionality of the licensing portion of

the statute was challenged as applied to private carriers, the Florida court upheld this particular licensing application then went on to hold that "... the provisions of the statute that are legally applicable only to common carriers are not intended to be applied to and are not applicable to ..." private carriers. The Florida court then left the other applications of the sections of the statute to be worked out from time to time as the then prevailing pressures of substantive due process might dictate. This was held bad. Curing the potential substantive due process infirmities did not answer the indefiniteness risks for the private carrier. "The legislature could not thus impose upon laymen, at the peril of criminal prosecution, the duty of severing the statutory provisions and thus resolving important constitutional questions ..." 283 U.S. p. 564.

In *Herndon v. Lowery*, *supra*, defendant was rescued from a Georgia insurrection statute making unlawful "any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the state." The Georgia court defined the causal connection between the persuasion and the reaction to be limited to "a reasonable time". The Supreme Court found this unacceptable because no one could ascertain when his utterance might beget the prohibited resistance to the state. At the same time the jury was licensed to create its own standard in each case.

In the absence of clarifying constructions of the Texas Supreme Court to define the correct and constitutional scope of the statute, its terms in the light of its use by the defendant law officers render it unconstitutionally vague. No one can reasonably know what the statute prohibits or does not prohibit.

For all of the above reasons, Appellees submit that the judgment of the district court was correct as to Article 5154f.

CONCLUSION

The district court correctly applied the tests of *Younger v. Harris* (although no interference with pending criminal prosecutions was requested or granted).

The challenged statutes are unconstitutional, and the judgment of the district court was correct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Chris Dixie, a member of the Bar of the Supreme Court of the United States, do hereby certify that appropriate copies of the foregoing Appellees' Brief have been served on counsel for appellants by depositing same in the United States mail, certified, postage prepaid, addressed to Hon. John L. Hill, Attorney General of Texas, and Hon. Gilbert J. Pena, Assistant Attorney General, P. O. Box 12548, Capitol Station, Austin, Texas 78711, on this the _____ day of August, 1973.

CHRIS DIXIE

APPENDIX TO APPELLEES' BRIEF

Art. 5153. Other Rights and Privileges

It shall be lawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce by peaceable and lawful means, any person to accept any particular employment or to enter or refuse to enter any pursuit or quit or relinquish any particular employment or pursuit in which such person may then be engaged. Such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof.

Article 5154b. Liability of labor organizations for damages

Section 1. A labor organization whose members picket or strike against any person, firm or corporation shall be liable in damage for any loss resulting to such person, firm or corporation by reason of such picketing or strike in the event that such picketing or strike is held to be breach of a contract by a Court of competent jurisdiction.

Art. 5207a § 1

The inherent right of a person to work and bargain freely with his employer, individually or collectively, for terms and conditions of his employment shall not be denied or infringed by law, or by any organization of whatever nature.

Excerpts from Attorney General's Post Hearing Brief to the District Court.

"On this occasion [October 12, 1966] in addition to being charged with disturbing of the peace, all persons present could have been charged with violation of Article 482, Abusive Language, violation of Articles

439 and 449, Unlawful Assembly. If charges had been made under Articles 455, 464, 466, and under Article 468, all persons present would have been guilty of rioting as all would have been guilty of rioting as all would be guilty if anyone present performed an illegal act." (pp. 15-16)

"In the next scene, *Paragraph 7.11*, [January 26, 1967] Plaintiffs offered no evidence to rebut the fact that they were using a loud speaker and calling to Augustine Lopez and Fredrico Pena and other workers by using 'the foulest words known to that language in this area. * * * Assuming the correctness of this uncontroverted testimony, Plaintiff could clearly have been charged under Articles 482, Abusive Language; 439, 449 Unlawful Assembly; 455, 464, 466, 469, Rioting Statutes; and 5154d, V.C.S." (p. 20)

"* * * [On January 26, 1967 at the Courthouse] the entire crowd could have been arrested and charged with unlawful assembly under the P. C., Articles 439, 449; for Rioting, P. C., Articles 455, 466; for Disturbing the Peace, P. C., Article 482, Abusive Language." (pp. 21-22)

"On February 1, 1966, the instance complained about in *Paragraph 7.13* occurred. In reviewing the record, there is some doubt as to whether or not Penal Code, Article 474 applies. Based on the testimony of the two Catholic priests, Father Smith and Father Killian, everyone present could have been charged with violation of Article 5154d, Mass Picketing, with Articles 439 and 449, Unlawful Assembly; and possibly under Article 482, Abusive Language, as Father Smith stated that they were calling the workers 'scab' in Spanish in attempting to use the word that has 'punch to it and an edge to it.'" (p. 22)

"*Paragraph 7.18* complains of the arrest [On May 18, 1967] of twenty-one pickets at the entrance of Trophy Farm. * * * Charges could have likewise been filed for rioting and unlawful assembly." (pp. 25-26)

"At the time and place in question [On May 26, 1967] both those initially arrested and those arrested in the secondary group were clearly guilty of Unlawful Assembly Under Articles 439 and 449 of the Penal Code and of Rioting under Articles 455, 464, and 466. * * * It is interesting to note that in spite of protestations of innocence, each of the person arrested had participated in union activity, were away from their homes with the intention of aiding and lending support to the unlawful assembly and riot at Mission, Texas. It is immaterial under State law whether or not they were actually standing on the railroad tracks themselves or merely near to the tracks or even if they were somewhere else if they were or had been a part of this unlawful assembly." (pp. 30-32)

"In *Paragraph 7.21*, complaint is made of the arrest [On May 31, 1967] union members who were talking to workers in the field through a loud speaker. * * * In addition on this occasion, participants could have been charged with violation of Articles 439, 449, Unlawful Assembly; Articles 474, Disturbing the Peace; and Article 482, Abusive Language, Articles 455, 464, or 466 of the rioting statute." (pp. 33-34)

"In *Paragraph 7.16*, * * * Diaz was speeding up and passing the bus, and then slowing it down so that it could not proceed. * * * A valid charge of Unlawful Assembly, Articles 439 and 449 or Rioting, Articles 455 and 464 could have been filed against all persons in the car." (pp. 23-24)

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NO. 72-1125

Supreme Court of the United States

October Term, 1973

A. Y. ALLEE, ET AL, *Appellants*
v.
FRANCISCO MEDRANO, ET AL, *Appellees*.

**On Appeal From The United States District
Court, Southern District of Texas,
Brownsville Division**

**BRIEF FOR THE AMERICAN FEDERATION OF
LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS AS AMICUS CURIAE**

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Supreme Court of the United States

October Term, 1973

NO. 72-1125

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v.
FRANCISCO MEDRANO, ET AL, *Appellees*.

On Appeal From The United States District
Court, Southern District of Texas,
Brownsville Division

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus*, in support of the appellees' position, is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), a federation of 113 national and international unions having a total membership of approximately 13,500,000 working men and women, with the consent of the parties as provided for in Rule 42 of the Rules of this Court.

ARGUMENT

A persistent theme in American social history has been the enlistment of law enforcement authorities "as allies of management in its attempt to prevent the organization and

strengthening of labor unions" (cf. *Boys Markets v. Clerks' Union*, 398 U.S. 235, 250). This case presents a flagrant example of the abuse of "law enforcement powers to suppress [a] strike . . . and to discourage attempts to engage in constitutionally protected conduct in support of [that] strike." J.S. 33, 51. That was the conclusion of the District Court, meticulously documented in its particulars. Thus, as the court below properly concluded, this is a proper case for the exercise of federal jurisdiction under the principles stated in *Younger v. Harris*, 401 U.S. 37 and its companion cases.¹

Two of the major weapons employed by the appellant law officers here were the Texas statutes prohibiting mass picketing and secondary strikes, picketing and boycotts. Both of these provisions are aimed solely and directly at labor unions. For this reason we develop in this argument the proposition that both are unconstitutional, leaving it to appellees to treat with the other, and more generally applicable, statutes challenged in this litigation.

¹ In arguing that the "bad faith or harassment" standard of *Younger* was not met appellants seek to avoid the problem posed by the findings of the court below by substituting their own version of the facts. While appellants thus invite the Court to decide this point on the basis of factual allegations and testimony discredited by the District Court, they do not, because they cannot, assert that the lower court's findings were clearly erroneous, F.R.Civ.P. 52(a). Indeed, since there is no challenge to the findings in the Questions Presented, appellants fail even to lay the jurisdictional foundation for such a claim. *Scripto, Inc. v. Carson*, 361 U.S. 376, 386, n. 12. For, the validity of the findings is an entirely different issue from the legal standard utilized in evaluating those findings, the only question presented on this phase of the case. See, e.g. *United States v. Parke, Davis & Co.*, 362 U.S. 29, 44-45.

1. We are first concerned with Article 5154d § 1 Part 1 of the revised Civil Statutes of Texas, denominated as the "mass picketing" statute, which forbids "more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets."²

This provision has been authoritatively construed by the Texas courts to be violated whenever its precise terms are not strictly complied with. *Geissler v. Cossoulis*, 424 S.W.

² The text of this provision is set out in the Appendix, pp. 21-22 *infra*.

An admittedly closer question than that concerning Part 1 is presented with respect to the constitutionality of Article 5154d, § 1 Part 2. The basic principle that the State may regulate actual obstructions of entrances to private premises is unquestioned, and was fully understood by the District Court which sustained the constitutionality of Article 784. J.S. 70. The issue of the constitutionality of Article 5154d, § 1 Part 2 therefore turns on whether the court below correctly construed that provision as going impermissibly beyond *Cameron v. Johnson*, 390 U.S. 611, which upheld a Mississippi statute prohibiting "unreasonable" obstructions. Plainly, if, as the District Court apparently concluded (J.S. 63), Article 5154d § 1 Part 2 makes the physical presence alone of pickets an illegal obstruction, even if they are peaceful, and take every precaution not to interfere with free ingress and egress, the statute would interfere with the exercise of First Amendment rights without achieving any legitimate social objective. The District Court's reading of this provision as going this far, is, as that court noted, consistent with the Texas court's broad reading of Part 1, and is further buttressed by the fact that all three members of the District Court were Texas "practitioners before they ascended the bench [whose] view of [Texas] law necessarily are persuasive with" this Court (*Gooding v. Wilson*, 405 U.S. 518, 524).

Nevertheless, we recognize, as does the State, that this issue is of little practical importance in any event, since Article 784, which survives, fully preserves the authority of the State to eliminate actual obstructions. Indeed, the State regarded the matter as of

2d 709 (Texas Civ. App.—San Antonio 1969, error ref. n.r.e.); *Sabine Area Building Trades Council v. Temple Associates, Inc.*, 468 S.W. 2d 501 (Tex. Civ. App.—Beaumont, 1971, no writ). The Texas courts so held even while recognizing

“that the distance and numbers formula, as applied to some situations, would, in fact, render otiose efforts to publicize the facts of a labor dispute by picketing and thus constitute an unreasonable interference with freedom of expression.” *Geissler*, 424 S.W. 2d at 712.

In light of the understanding that strict application of the formula by law officers and courts can yield an unconstitutional restraint on protected First Amendment freedoms the statute plainly cannot stand. The *Geissler* court was of the view that

“this does not require that the statute be regulated to the limbo of unconstitutional legislation. A statute valid as to one state of facts may be invalid as to another. *Nashville, C. & St. L. R. Co. v. Walters*, 294 U.S. 405 (1935).” *Ibid.*

But the *Walters* case declared the standard for determining the constitutionality of economic regulation against a claim of denial of substantive due process. A different standard must govern here:

“It has long been recognized that the First Amend-

such minor moment that it resisted plaintiff's suggestion that the order entered by the court below not reach Article 5154d § 1 Part 2 J.S. 64. This was apparently due to the State's tactical decision to combine its arguments on Parts 1 & 2, and thus to make its case on the numbers and distance formula appear in a more favorable light.

ment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society.

. . .

"Facial overbreadth claims have also been entertained where statutes, by their terms, purport to regulate the time, place and manner of expressive or communicative conduct, see *Grayned v. City of Rockford*, 408 U.S. 104, 114-121 (1972); *Cameron v. Johnson*, 390 U.S. 611, 617-619 (1968); *Zwickler v. Koota*, 389 U.S. 241, 249-250 (1967); *Thornhill v. Alabama*, 310 U.S. 88 (1940)." *Broadrick v. Oklahoma*, 93 S. Ct. 2908, 2915-2916.³

³ Any limitations on the overbreadth doctrine which may be found in *Broadrick* do not affect this case. We are not concerned with the incidental deterrence of constitutional activity by a statute which touches upon First Amendment interests while regulating conduct outside the First Amendment. Rather, as for example, in *Shelton v. Tucker*, 364 U.S. 479, the basic subject regulated is the exercise of the First Amendment right to communicate and the question is whether the interest of the State in restricting First Amendment rights is compelling. In the terms of *Broadrick* the overbreadth of this statute is "not only . . . real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." If this statute has any "legitimate sweep" at all, it is only in the rare situation where picketing by more than two persons in any space of 50 feet actually or inevitably creates an obstruction, intimidation, or danger of violence. Moreover this statute while "regulating conduct in the shadow of the First Amendment" does not do so "in a neutral, noncensorial manner" but is "directed at particular groups [and] view points" namely, at labor unions and other organizations urging cooperation with their lawful objects. *Id.* at 2917, 2918.

In *Grayned*, this Court held:

"The nature of a place, 'the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable.' Although a silent vigil may not unduly interfere with a public library, *Brown v. Louisiana*, 383 U.S. 131 (1966), making a speech in the reading room almost certainly would. That same speech should be perfectly appropriate in a park. The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time. Our cases make clear that in assessing the reasonableness of a regulation, we must weigh heavily the fact that communication is involved; the regulation must be narrowly tailored to further the State's legitimate interest. Access to the 'streets, sidewalks, parks, and other similar public places . . . for the purpose of exercising [First Amendment rights] cannot constitutionally be denied broadly' Free expression 'must not, in the guise of regulation, be abridged or denied.' " 408 U.S. 104, 116-117 (footnotes omitted)

The two pickets, fifty feet rule, cannot be justified under this test. Plainly, a far greater number of pickets at any entrance can be allowed without any interference of movement in or out of the premises, and pickets at the plant, away from entrances and exits can cause no interference with ingress or egress.

As the court below recognized in its pre-*Grayned* decision:

"Little imagination is required to envisage circumstances where groups of demonstrators, substantially larger than two persons, standing at closer quarters than fifty feet, would not threaten the safe flow of

traffic nor unreasonably interfere with free ingress or egress from nearby buildings." J.S. 62.

Appellants assert that "The State has long been recognized to have the right to regulate picketing but not to prohibit it." Tex. Br. p. 21.⁴ We of course accept this proposition, but it does not aid appellants. The scope of the State's power to regulate picketing was delineated in *Food Employees v. Logan Valley Plaza*, 391 U.S. 308, 313-314:

"We start from the premise that peaceful picketing carried on in a location open generally to the public is, absent other factors involving the purpose or manner of the picketing, protected by the First Amendment. *Thornhill v. Alabama*, 310 U.S. 88 (1940); *AFL v. Swing*, 312 U.S. 321 (1941); *Bakery Drivers Local 802 v. Wohl*, 315 U.S. 769 (1942); *Teamsters Local 795 v. Newell*, 365 U.S. 341 (1958). To be sure, this Court has noted that picketing involves elements of both speech and conduct, i.e., patrolling, and has indicated that because of this intermingling of protected and unprotected elements, picketing can be subjected to controls that would not be constitutionally permissible in the case of pure speech. See, e.g., *Hughs v. Superior Court*, 339 U.S. 460 (1950); *International Bro. of Teamsters v. Vogt, Inc.* 354 U.S. 284 (1957); *Cox v. Louisiana*, 379 U.S. 559 (1965); *Cameron v. Johnson*, 390 U.S. 611. Nevertheless, no case decided by this Court can be found to support the proposition that the nonspeech aspects of peaceful picketing are so great as to render the provisions of the First Amendment inapplicable to it altogether.

"The majority of the cases from this Court relied on by respondents, in support of their contention that

⁴ "Tex. Br." refers to the brief for the appellants in this case.

picketing can be subjected to a blanket prohibition in some instances by the States, involved picketing that was found either to have been directed at an illegal end, *e.g.*, *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949); *Building Service Employees Local 262 v. Gazzam*, 339 U.S. 532 (1950); *Plumbers Local 10 v. Graham*, 345 U.S. 192 (1953), or to have been directed to coercing a decision by an employer which, although in itself legal, could validly be required by the State to be left to the employer's free choice, *e.g.*, *Carpenters Local 213 v. Ritter's Cafe*, 315 U.S. 722 (1942) (secondary boycott); *Teamsters Local 309 v. Hanke*, 339 U.S. 470 (1950) (self-employer union shop). Compare *NLRB v. Denver Bldg. & Const. Trades Council*, 341 U.S. 675 (1951), and *International Bro. of Electrical Workers v. NLRB*, 341 U.S. 694 (1951)."⁵

Since the numbers and distance formula of Article 5154d applies to picketing regardless of its objects, and does not even require proof that it is directed to coerce a decision by anyone, it cannot be sustained on the basis of the cases cited in the second paragraph of the foregoing passage. And insofar as the statute is sought to be sustained as a permissible limitation on the "conduct, *i.e.*, patrolling" element of picketing (*ibid*), the test is that set forth in *Grayned*, 408 U.S. at 116-117. As *Grayned* shows, Article

⁵ Whatever inroads *Lloyd Corp. v. Tanner*, 407 U.S. 551, may have made on the ultimate holding of *Logan Valley*, the authority of the foregoing remains unimpaired. It was not disputed in *Tanner* that the distribution of handbills was the exercise of a First Amendment right; rather, the issue was whether the Constitution required a private party to allow distribution of the handbills on its private property. Article 5154d is not a trespass statute.

5154d is not a reasonable regulation because it is not "narrowly tailored to further the State's legitimate interests." *Ibid.*⁶

Finally, it does not save the numbers and distance formula that Texas has chosen to attach the epithet "mass picketing" to all picketing conducted by more than two persons within fifty feet of each other. As was said in *New York Times v. Sullivan*, 376 U.S. 254, 269, following *N.A.A.C.P. v. Button*, 371 U.S. 415, 429, "'mere labels' of state law" are entitled to no weight in determining the scope of constitutional protections:

"Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, ['mass picketing'] can claim no talismanic immunity from constitutional limitations. It must be

⁶ The decisions rendered at *nisi prius* in other states, cited by appellant (Tex. Br. 23-24) did not involve, much less sustain, a statute which purported to regulate the number and location of pickets. On the contrary, in each the Court issued an injunction to restrain picketing which was illegal because of its object or manner. *Rice & Holman v. United Electrical Workers*, 65 A.2d 638 (New Jersey Superior Ct. 1949) ("body-to-body" picketing); *Standard Appliances v. Korman*, 111 N.Y.S. 2d 783, 786 (New York S.Ct. 1952) ("disorderly" picketing); *Tarrytown Road Restaurant, Inc. v. Hotel and Restaurant Employees*, 115 N.Y.S. 2d 626, 631 (New York S.Ct. 1952) (illegal object); *Stern-fair Corporation v. Moving Pictures Operators*, 139 N.Y.S. 2d 145, 150 (New York S.Ct. 1955) ("misleading" signs); *Ballas Egg Products Company, Inc. v. Meat Cutters*, 160 N.E. 2d 164 (Ohio Ct.Com.Pl. 1959) (context of violence). Compare *Milk Wagon Drivers v. Meadowmoor*, 312 U.S. 287, 292.

measured by standards that satisfy the First Amendment."

And under those standards, as most recently explicated in *Grayned*, 408 U.S. at 116-117 (see p. 8 *supra*), Part 1 of § 1 of Article 5154d is plainly unconstitutional.

2. Article 5154f, of the revised Civil Statutes of Texas, prohibits "secondary strikes, picketing and boycotts" as there defined.⁷ Article 5154f, §§ 2d & h which denominate picketing by less than a majority of the picketed employer's employees as unlawful "secondary picketing," is sufficient, under this Court's precedents, to demonstrate that the State's prohibition of peaceful methods of communication on the ground that they are "secondary" is the starting point for constitutional analysis, not its conclusion:

"[T]he Pennsylvania Supreme Court *** did emphasize that the pickets were not employees of Weis and were discouraging the public from patronizing the Weis market. However, those facts could in no way provide a constitutionally permissible independent basis for the decision because this Court has previously specifically held that picketing of a business enterprise cannot be prohibited on the *sole* ground that it is conducted by persons not employees whose purpose is to discourage patronage of the business. *AFL v. Swing*, 312 U.S. 321. Compare *Bakery Drivers Local 802 v. Wohl*, 315 U.S. 769." *Logan Valley Plaza*, 391 U.S. at 314-315, emphasis in original.

In this area of the law, as in that covered by the "mass

⁷ The text of this provision is set out in the Appendix, pp. 22-24 *infra*.

picketing" statute just discussed, the State cannot rely on "'mere labels' of state law" to "claim . . . talismanic immunity from constitutional limitations." *New York Times*, 376 U.S. at 269.

As already noted, all communicative activity in public places is, of course, subject to regulation as to "time, place and manner." E.g. *Grayned*, 408 U.S. at 115. But prohibitions on communications in a labor dispute with a "secondary" object are not designed to serve the interest in orderly expression. They are a form of "subject matter" regulation, which restricts the right to picket, handbill, speak and assemble "on the basis of what [the individuals] intend to say" (*Police Department of Chicago v. Mosley*, 408 U.S. 92, 96). Such "regulation thus slip[s] from the neutrality of time, place, and circumstance into a concern about content" (*id.* at 99), and is for that reason inherently suspect since "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content" (*id.* at 95-96).

Certainly, then, the absolute outer limit of the state's regulatory power is that set in the series of cases, which culminated in *Teamsters v. Vogt*, 354 U.S. 284, 291, "sustaining injunctions against peaceful picketing, even when arising in the course of a labor controversy, when such picketing was counter to valid state policy in a domain open to state regulation." To the extent a state seeks to restrict picketing and, *a fortiori*, activity such as handbilling, the objective of which is *not* "counter to valid state policy," its efforts run counter to the First Amendment. It is equally well settled: first, that in determining the state's

policy, the "construction that the [State] Supreme Court has put upon the state statute * * * must, of course, [be] accept[ed]," (*Groppi v. Wisconsin*, 400 U.S. 505, 507); and, second, that state common law policies, as well as those enunciated in a statute, are relevant, *Teamsters v. Hanke*, 339 U.S. 470; *Vogt*, 354 U.S. at 293.

The policy of Texas with regard to so-called "secondary activity" is clear; the Texas law is in all salient respects the analogue of generally accepted common law principles as refined in § 8(b)(4) of the National Labor Relations Act, as amended, 29 U.S.C. § 158(b)(4). This is manifest from the Texas Supreme Court's leading decision in point, *Dallas General Drivers v. Wamix, Inc.*, 295 S.W.2d 873.

There, the highest court of the State, noting that the "public interest involved in industrial strife in intrastate business cannot be greatly different from the public interest in industrial strife in interstate business," and that § 8(b)(4) "is but a statutory restatement of the common-law rule against secondary boycotts" (*id.* at 882), squarely held that notwithstanding Art. 5154f §§ 2d & h, dealing with "secondary picketing":

"It was immaterial to the right to picket Wamix that only a minority of its employees engaged in the picketing or that those picketing had been discharged from their employment. *International Union v. Cox*, 148 Tex. 42, 219 S.W.2d 787. Neither was picketing by Union at and near the project premises of the construction companies a violation of Article 5154f. In so far as that Article seeks to interdict picketing of all employers except those with whom a labor dispute exists on the part of their own employees, it offends against the Fourteenth Amendment and is unconstitutional. *Con-*

struction and General Labor Union v. Stephenson, 148 Tex. 434, 225 S.W.2d 958; *American Federation of Labor v. Swing*, 312 U.S. 321. If picketing cannot be limited to an employer who has a labor dispute with his employees it necessarily cannot be limited to the premises of such an employer." 295 S.W.2d at 881.

And notwithstanding the breadth of both the secondary picketing provision and Art. 5154f § 2e, dealing with secondary boycotts, the *Wamix* court stated that:

"The nature of a secondary boycott which is contrary to the public policy of this state, [is] that it involves the application of coercive pressure on one not a party to a labor dispute to withdraw patronage from an employer with whom a dispute exists. 285 S.W.2d 947. Judge Learned Hand has defined a secondary boycott in these words: 'The gravamen of a secondary boycott is that its sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it. Its aim to compel him to stop business with the employer in the hope that this will induce the employer to give in to his employee's demands.' *International Brotherhood, etc. v. N.L.R.B.*, 181 F.2d 34, 37." 295 S.W.2d at 881-882.

On this basis it concluded that:

"There is no such coercive pressure in the restricted activity of pickets accompanying trucks to job sites. The judgment is obviously erroneous in enjoining Union from having its pickets accompany *Wamix* trucks to job sites." *Id.* at 882; Compare *Bakery Drivers Local v. Wohl*, 315 U.S. 769, 772, 775.

The State Court then went on to state:

"We have long since held that the business of the

neutral will not be protected from the harmful effects of picketing in all instances and under all circumstances, *Ex Parte Henry*, 147 Tex. 315, 215 S.W.2d 588, so that we may not now, without overruling *Ex Parte Henry*, lay it down as an inexorable rule of decision that all picketing which results in incidental pressure on and harm to a neutral may be enjoined. On the other hand, it is also now well settled that picketing will be enjoined if it is principally directed at and operative on a neutral. *Cain, Brogden & Cain v. Local Union No. 47, etc., supra*; *Carpenters and Joiners Union v. Ritter's Cafe*, Tex. Civ. App., 133 S.W.2d 223, on subsequent appeal, 149 S.W.2d 694; 315 U.S. 722. • • • two important factors in determining whether picketing in a particular case because of its secondary effect on neutral employers is proscribed by the public policy are: (a) the good faith intent of the union or striking employees in picketing a secondary situs to exert pressure only on the primary employer, to which effort the effect on neutral employers is purely incidental, and (b) the balancing of relative rights of all affected parties against the harm which would result to the other parties and to the public from permitting or restraining the picketing." 295 S.W.2d at 882, 884. Compare *NLRB v. Operating Engineers*, 400 U.S. 297, 303; *Steelworkers v. NLRB (Carrier Corp.)*, 376 U.S. 492, 502; *Electrical Workers v. NLRB (General Electric)*, 366 U.S. 667, 673.

Nevertheless, and in plain disregard of the limits of the "valid state policy" on "secondary" activity articulated by the Texas Supreme Court, the appellant law officer, have utilized the bare language of Article 5154f, read at its broadest, as an engine of oppression "to suppress the farm workers strike" (J.S. 55). Thus, for example, the Article 5154f charges in connection with picketing, and efforts to

organize picketing, at Mission, Texas on May 26, 1967 (J.S. 45-50), were in complete disregard of the principles enunciated some twenty years before in *Ex Parte Henry*, 215 S.W. 2d 588 (reaffirmed in *Wamix*, 295 S.W.2d at 882) where the Texas Supreme Court held:

"So the competent testimony shows that relators did engage in picketing on a public street but adjacent to the premises and in front of one entrance to the plant of the employer with whom their union had a bona fide labor dispute; that their picketing was free of threats or violence, was not carried on by more than two pickets at any time and constituted no physical obstruction to anybody going into or coming out of the plant; that, however, it violated the trial court's order in being carried on within 100 feet of the spur tracks while the railway employees were using them in an effort to transport freight into the plant; and that it was intended to urge the railway employees 'not to serve' the plant and that it accomplished that purpose.

"As we have seen, the conduct which was held contemptuous because in violation of the injunction granted in *Greenville Cotton Oil Mill Co. v. Amer. Fed. of Grain Processors, A. F. of L., et al.*, amounted only to peaceful picketing, which not only is not unlawful but is protected by the First and Fourteenth Amendments. . . . In this connection, it seems to be the position of respondents that since the employees of the railways would not cross the picket line manned by relators, the picketing and the consequent refusal of the railway employees to serve the employer's plant constitute such concerted action between relators and those employees as to amount to secondary picketing and boycotting and conspiracy in restraint of trade, as denounced by our statutes. Under the decisions of the Supreme Court already cited and discussed, picketing

does not offend against the statutes merely because third parties who come to the area of the dispute may prove sympathetic to one disputant rather than to the other. We overrule the point." 215 S.W.2d at 592, 594-595.

The District Court's injunction against further misuse of Article 5154f by the appellant law officers was, therefore, plainly proper.

The declaratory judgment by the court below that Article 5154f is unconstitutionally overboard was also proper. To be sure, this case is analogous to *Douglas v. Jeanette*, 319 U.S. 157, in that the Texas Supreme Court has already recognized that Art. 5154f does not meet constitutional requirements and has reformed the Texas law of "secondary" activity to bring it within the requirements stated in *IBEW v. NLRB*, 341 U.S. 694. But, here, as opposed to *Douglas*, even after the decisions which have limited the statute, there *are* "ground[s] for supposing that the intervention of a federal court, in order to secure [appellees] constitutional rights, [is both] necessary [and] appropriate," since it *does* "appear from the record that [appellees] have been threatened with injury other than that incidental to every criminal proceeding brought lawfully and in good faith" (319 U.S. at 164, 165). Thus the issuance of declaratory relief to preclude further misuse of this hollow statutory shell was correct. The action of the District Court complements and completes the prior actions of the Texas Supreme Court, it does not run counter to them.

3. In conclusion, we should address ourselves to the State's argument that there is a constitutional distinction between "public issue" picketing and the regulation of

labor union picketing. Tex Br. p. 22.⁸ Even the District Court, though otherwise faithful to this Court's rulings, has read the decisions since *Thornhill v. Alabama*, 310 U.S. 88, as imposing "two distinct standards of regulation * * * one for 'public issue' picketing and another for 'private issue' picketing." As these terms are used by the District Court:

" 'Public issue' picketing involves publicizing opinions or grievances which are directed at society as a whole—the 'civil dissent' demonstrations of today. 'Private issue' picketing involves publicizing particular disputes; this class is confined almost exclusively to labor-dispute picketing." J.S. 59.

This distinction finds no support in the decisions of this Court.

As early as *Senn v. Tile Layers Union*, 301 U.S. 468, 478, Mr. Justice Brandeis held for the Court that:

" * * * Members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution * * *."

Senn was followed by *Thornhill*, 310 U.S. at 102 which expressly held that:

"In the circumstances of our times the dissemination of information concerning the facts of a labor dispute

⁸ A similar view was taken by the Virginia Supreme Court in *Austin v. Old Dominion Branch No. 496, etc.*, 213 Va. 377, 192 S.E.2d 737, probable jurisdiction noted, 412 U.S. (May 29, 1973) (No. 72-1180). See the discussion of that point at pp. 8-10 of the brief *amicus curiae* of the AFL-CIO in that case.

must be regarded as within that area of free discussion that is guaranteed by the Constitution."

Decisions subsequent to *Thornhill* have left that core holding undisturbed. See *Logan Valley Plaza*, 391 U.S. at 313-314 quoted at pp. 7-8 *supra*.

Conversely, as *Cox v. Louisiana*, 379 U.S. 559, and *Cameron v. Johnson*, 390 U.S. 611, both cited in *Logan Valley*, show, picketing by civil rights groups is subject to regulation in both its means and objects on the same basis as picketing by labor unions.

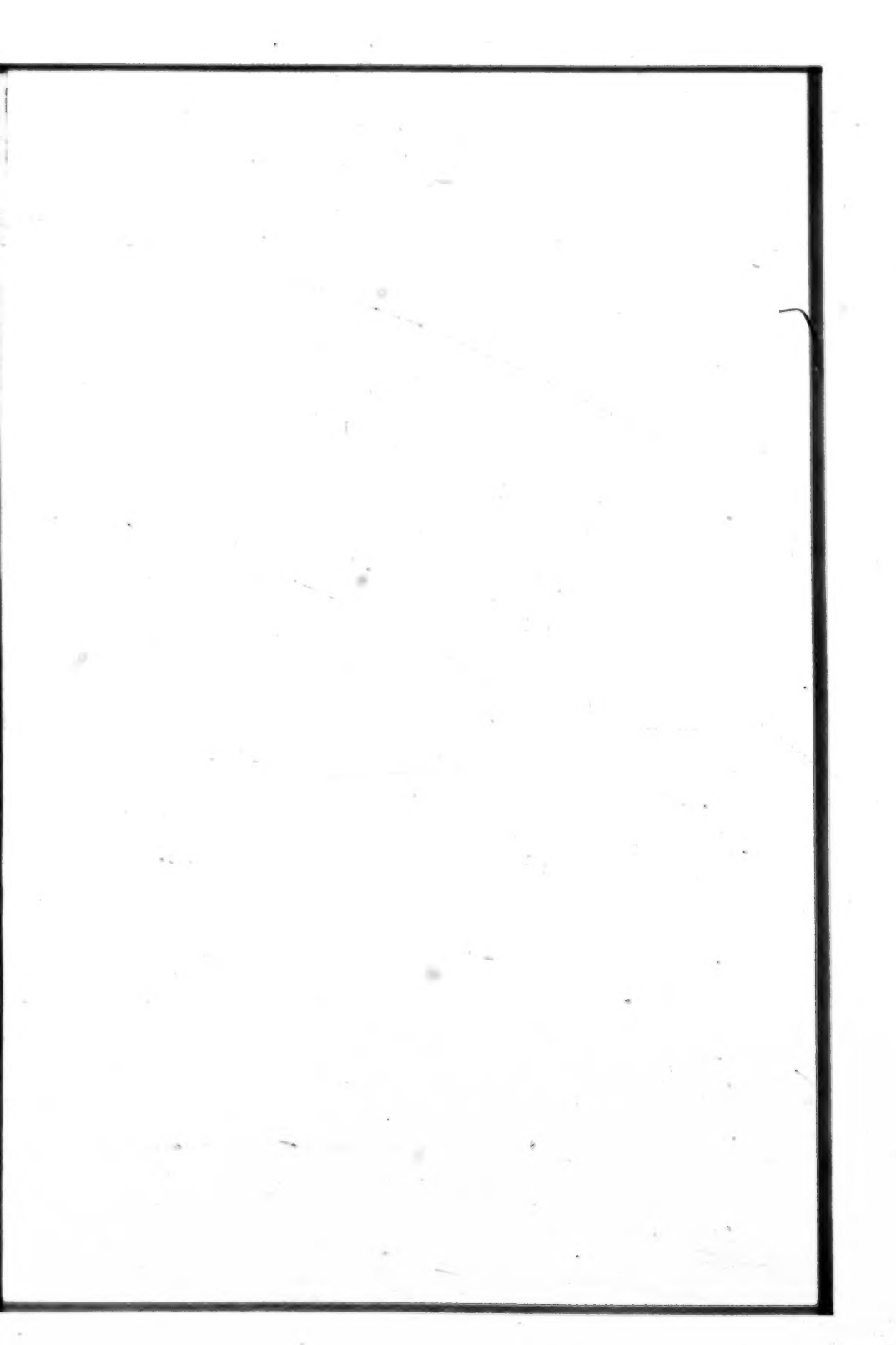
This is in accord with the Court's recognition that the First Amendment reaches labor controversies:

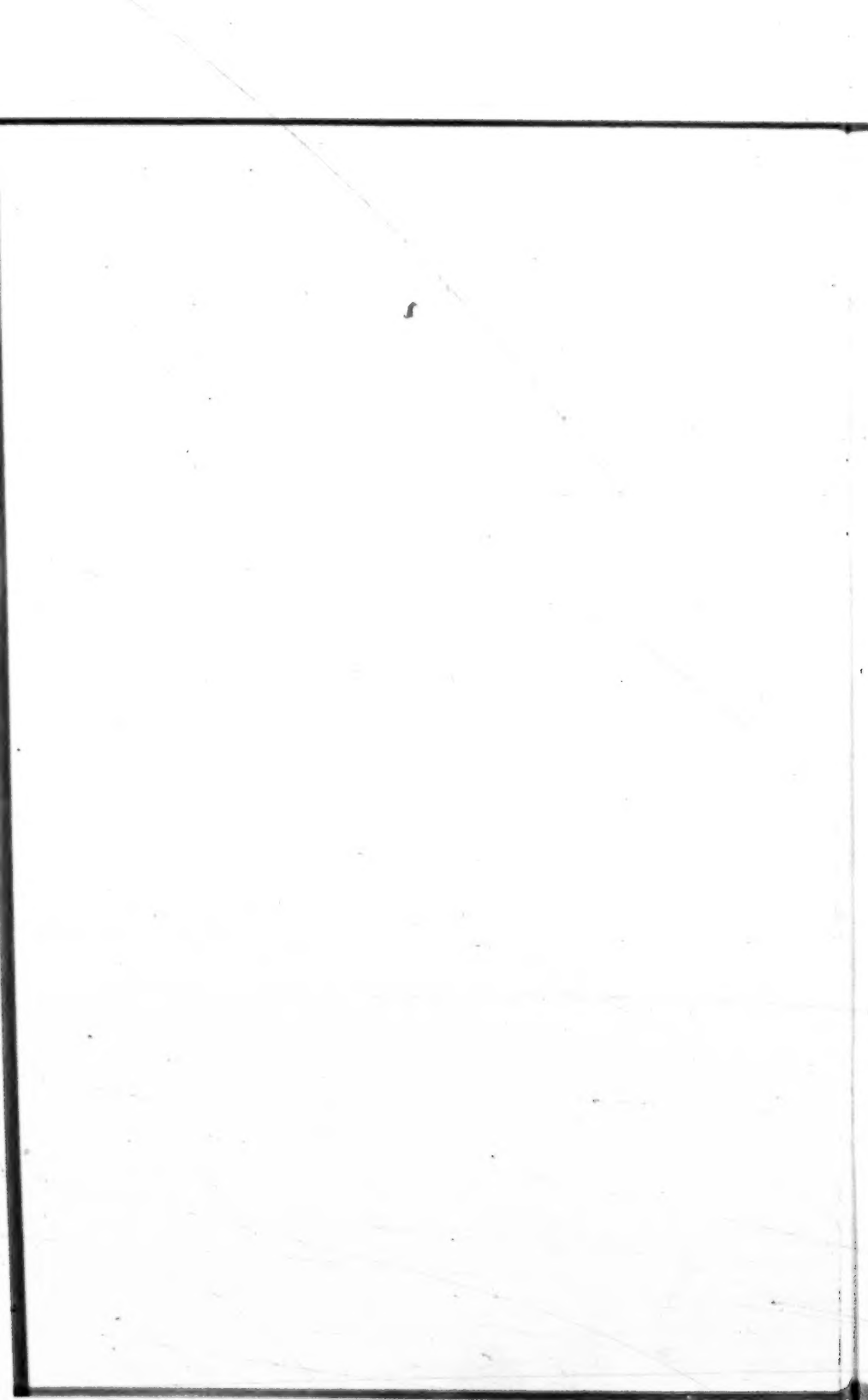
"Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest." *Thomas v. Collins*, 323 U.S. 516, 531.

It is particularly significant, in the context of the present case, that in *Thomas*, as here, the purpose of the speech and the meeting which the Court held to be constitutionally protected was to urge workingmen to join a union.

Indeed, any double standard of the sort envisaged by the court below would contravene the fundamental proposition that:

"the Constitution protects expression and association without regard to the race, creed, or political or religious affiliation of the members of the group which invokes its shield, or to the truth, popularity, or social





utility of the ideas and beliefs which are offered.”
N.A.A.C.P. v. Button, 371 U.S. 415, 444-445.

Thus, in *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1, 8, this Court followed *Button* and stated:

“the Constitution protects the associational rights of the members of the union precisely as it does those of the NAACP.” See also, e.g. *Branzburg v. Hayes*, 408 U.S. 665, 704-705; *Schacht v. United States*, 398 U.S. 58, 62-63; *Niemotko v. Maryland*, 340 U.S. 268, 272-273.

And, when in *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, an ordinance which restricted all picketing except labor picketing was struck down as violative of the equal protection clause, this Court did not remotely suggest that an ordinance imposing special restrictions on labor picketing alone would be regarded more favorably. On the contrary, the Court said:

“In this case, the ordinance itself describes impermissible picketing not in terms of time, place, and manner, but in terms of subject matter. The regulation thus slip[s] from the neutrality of time, place, and circumstance into a concern about content. *This is never permitted.*” *Id.* at 99, footnote omitted, emphasis added.

CONCLUSION

For the above noted reasons as well as those stated by appellees the decision below should be affirmed.

Respectfully submitted,

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August 15, 1973

APPENDIX

1. Article 5154d § 1 of the revised Civil Statutes of Texas reads as follows:

It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

"Mass picketing" as that term is used herein, shall mean any form of picketing in which:

1. There are more than two (2) pickets at any time within fifty (50) feet of any entrance to the premises being picketed; or within fifty (50) feet of any other picket or pickets.

2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions.

The term "picket," as used in this Act, shall include any person stationed by or acting for and in behalf of any organization for the purpose of inducing, or attempting to induce, anyone not to enter the premises in question or to observe the premises so as to ascertain who enters or patronizes the same, or who by any means follows employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

The term "picketing," as used in this Act, shall include the stationing or posting of one's person or of others for and in behalf of any organization to induce anyone not to enter the premises in question, or to

observe the premises so as to ascertain who enters or patronizes the same, or to follow employees or patrons of the place being picketed either to or from said place so as to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

2. Article 5154f of the revised Civil Statutes of Texas reads as follows:

Section 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

Section 2. As used in this Act:

a. The term "labor union" means every association, group, union, national and local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing in part for the purpose of protecting themselves and improving their working conditions, wages, or employment relationships in any manner, and shall include the local, state, national and international affiliates of such organizations or unions.

b. "Secondary strike" shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

c. The term "picket" shall include any person sta-

tioned by or acting in behalf of any organization for the purpose of inducing anyone not to enter the premises in question; or for apprising the public by signs, banners, or other means, of the existence of a labor-dispute at or near the premises in question; or for observing the premises so as to ascertain who enters or patronizes the same; or any person who by any means follows employees or patrons of the place being picketed either to or from such place so as to either observe them or to attempt to persuade them to cease entering or patronizing the premises being picketed.

d. The term "secondary picketing" shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

e. The term "secondary boycott" shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damages to any person, firm or corporation for whom they are not employees, by

(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

(2) Picketing such person, firm or corporation; or

(3) Refusing to handle, install, use or work on the equipment or supplies of such person, firm or corporation; or

(4) Instigating or fomenting a strike against such person, firm or corporation; or

(5) Interfering with or attempting to prevent the free flow of commerce; or

(6) By any other means causing or attempting to

cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute.

f. The term "employer" means any person, firm or corporation who engages the services of an employee.

g. The term "employee" shall include any person, other than an independent contractor, working for another for hire in the State of Texas.

h. The term "labor dispute" is limited to and means any controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, the controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee members only of such union, a labor dispute within the meaning of this Act.

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**In the Supreme Court
OF THE
United States**

OCTOBER TERM, 1972

No. 72-1125

A. Y. ALLEE, et al., *Appellants*

VS.

FRANCISCO MEDRANO, et al., *Appellees*.

**On Direct Appeal from the United States
Three-Judge District Court for the
Southern District of Texas**

**MOTION FOR LEAVE TO FILE BRIEF
and
BRIEF FOR AMICUS CURIAE
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND**

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VS.

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On Direct Appeal from the United States
Three-Judge District Court for the
Southern District of Texas

**MOTION OF THE MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND
FOR LEAVE TO FILE BRIEF AMICUS
CURIAE**

The Mexican American Legal Defense and Educational Fund (MALDEF) requested the parties in this case to consent to filing the attached brief amicus curiae out of time. Appellants as well as Appellees have granted their consent¹

¹The letters of consent have been filed with the Clerk.

MALDEF was established on May 1, 1968, as a non-profit corporation incorporated under the laws of the State of Texas, primarily to provide legal assistance to Mexican Americans (Chicanos).² It is headquartered in San Francisco, with additional offices in San Antonio, Los Angeles, Denver, Albuquerque, and Washington, D.C.

MALDEF, in its efforts to assist the Mexican American community achieve its rights, under law, is actively involved in litigation to challenge the traditional barriers with which Mexican Americans are faced: abridgement of participatory constitutional, civil, and political rights; unequal educational opportunities; discriminatory employment practices; unequal distribution of public services; and law enforcement misconduct.

Courts have recognized that Mexican Americans constitute a separate group which has often been subject to illegal discrimination in our society. Quite recently a federal district court surveyed the situation concerning the Mexican Americans in Texas who were represented by MALDEF.

Because of long standing educational, social, legal, economic, political and other widespread and prevalent restrictions, customs, traditions, biases and prejudices, some of a so-called *de jure* and some of a so-called *de facto* character, the Mexican-American . . . has historically suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in

²Currently the word Chicano is used interchangeably with the term Mexican American.

the fields of education, employment, economics, health, politics, and others.³

The questions presented in the case before this Court arise out of the deployment of state law enforcement agencies, including the Texas Rangers, during a year long strike which was instituted in 1966 for the purpose of organizing a union for Mexican American farm workers. So significant are these events and resulting issues, that they also have been scrutinized in several non-judicial forums.

After the Texas law enforcement agencies responded in a partisan manner to the organizational efforts of the Mexican American agricultural workers in Starr County, Texas, a series of hearings and investigations conducted by several agencies of the Federal Government looked into these events. The Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare was able to document the continual harassment, physical violence, and brutality to which union organizers and sympathetic employees were subjected. The Subcommittee heard testimony concerning the pattern of conduct by which local and State officials assisted the growers. Law enforcement officials made arrests without legal cause, used physical force far beyond that required under the circumstances, and imposed unlawfully high bail.⁴

³*Graves v. Barnes*, 343 F. Supp. 704 (Jan. 28, 1972; W.D. Texas) *rev'd in part, aff'd in part, sub nom., White v. Regester*, 93 S.Ct. 2332 (1973). See also *Keyes v. School District No. 1, Denver, Colorado*, 93 S.Ct. 2686 (1973).

⁴Committee on Labor and Public Welfare, United States Senate, *The Migratory Farm Labor Problem in the United States*, 40-41 (1968) [hereinafter cited as *U.S. Senate Report*].

All of these actions were in furtherance of a studied effort to break the strike and to deny the strikers their civil rights.

Indeed, the events in Starr County were so remarkable as to evoke memories of wholesale strike breaking by state and local police and paramilitary forces that preceded enactment of the National Labor Relations Act. With the enactment of the NLRA, the organizational and strike activities of most American laborers were protected by federal statute as well by the Constitution. Consequently, especially because of the pre-emptive force of the NLRA, strike breaking by state and local law enforcement authorities was considerably reduced.⁵ But agricultural workers including large numbers of Mexican Americans, are expressly excluded from the protections of the NLRA. Hence, state and local law enforcement officials continue with some frequency to break their strikes and interfere with their organizational activities.

The Texas Advisory Committee to the United States Commission on Civil Rights issued the following report concluding that the legal and civil rights of union organizers and sympathizers in Starr County had been violated by:

1. Physical and verbal abuse by Texas Rangers and Starr County law enforcement officials;

⁵See P. Taft and P. Ross, *American Labor Violence: Its Cause, Character, and Outcome*, in 1 Report of the Nat'l Com'n on the Causes and Prevention of Violence, *Violence in America: Historical and Comparative Perspectives*, 221-301 (1969).

2. Failure to bring promptly to trial members and union organizers against whom criminal charges have been alleged;
3. Holding of union organizers for many hours before they were released on bond;
4. Arrest of UFWOC members and organizers on the complaints of growers and packers without full investigation of the allegations in the complaints. In contrast, law enforcement officials made full investigations before acting on complaints filed by members and officers of UFWOC;
5. Encouragement of farmworkers by Rangers to cross picket lines;
6. Intimidation by law enforcement officers of farmworkers taking part in representation elections; and
7. Harassment by Rangers of UFWOC members, organizers, and a representative of the Migrant Ministry of the Texas Council of Churches which gave the appearance of being in sympathy with the growers and packers rather than the impartiality usually expected of law enforcement officers.⁶

The United States Commission on Civil Rights also heard testimony concerning the actions of the Texas Rangers during this labor dispute.⁷ In its extensive study, the Commission reported that the Texas Rangers in collusion with local law enforcement officials had purposefully harassed and intimidated union

⁶*U.S. Senate Report, supra* note 4, at 41.

⁷United States Commission on Civil Rights, *Hearing Held in San Antonio, Texas*, 715-45 (1968).

organizers in Starr County in order to break the strike and to deny the strikers their legal rights.⁸

In addition to these official studies and reports, most of the recent Mexican American history texts discuss in detail the partisan involvement of the Texas Rangers.⁹ This discriminatory law enforcement follows the historic pattern that continues to victimize the Mexican American throughout the Southwest.¹⁰ It is virtually identical with the treatment of Blacks by law enforcement officials in the Southeast.¹¹

MALDEF has litigated numerous suits attacking discriminatory and illegal practices of law enforcement officials affecting the lives and liberties of Mexican Americans and other minorities. With few exceptions, these challenges have been based upon the irreconcilability of such practices with the purpose and spirit of the Constitutional and civil rights of Mexican Americans, including the affirmative remedies afforded by Congress under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2281, 2284. Since the decision of the Court in this litigation may affect the scope of 42 U.S.C.

⁸United States Commission on Civil Rights, *Mexican Americans and the Administration of Justice in the Southwest*, 16-17 (1970) [hereinafter cited as *1970 Report*].

⁹L. Grebler, J. W. Moore, and R. C. Guzmán, *The Mexican-American People: The Nation's Second Largest Minority* 532 (1970) [hereinafter cited as *Guzmán*]; A. B. Rendón, *Chicano Manifesto: the History and Aspirations of the Second Largest Minority in America* 220 (Collier 1972) [hereinafter cited as *Rendón*]; R. Acuña, *Occupied America: the Chicano's Struggle Toward Liberation* 41 (Canfield 1972) [hereinafter cited as *Acuña*]; and S. Steiner, *La Raza: the Mexican Americans* (Harper Colophon 1970).

¹⁰*1970 Report*, *supra* note 8, at 14-18.

¹¹United States Commission on Civil Rights, *Justice* (1961).

§ 1983 and 28 U.S.C. §§ 2281, 2284, MALDEF deems it important to bring to the Court's attention some implications of the significant issues here presented by respectfully praying leave to file brief amicus curiae out of time in support of Appellees' brief.

In the attached brief, MALDEF seeks to provide the Court with a brief historic context of the administration of law enforcement in the Southwest, including that of the Texas Rangers, as it has affected Mexican Americans during labor and other organizing disputes. The brief also argues that the facts in this case clearly justified the district court's intervention as a court of equity. As to the constitutionality of the state laws in question, MALDEF relies entirely on the arguments in the briefs of Appellees and of amicus curiae AFL-CIO.

Dated: November, 1973.

Respectfully submitted,

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Mexican American Legal Defense
and Educational Fund,

Attorneys for Amicus Curiae.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1972

No. 72-1125

A. Y. ALLEE, et al., *Appellants*

VS.

FRANCISCO MEDRANO, et al., *Appellees*.

On Direct Appeal from the United States
Three-Judge District Court for the
Southern District of Texas

BRIEF OF AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The interest of the Amicus Curiae is set forth in the foregoing Motion.

ARGUMENT

ESPECIALLY WHEN VIEWED IN HISTORIC CONTEXT, THE FACTS IN THIS CASE DEMONSTRATE THE REQUISITE "BAD FAITH" AND "IRREPARABLE INJURY" TO REQUIRE THE INTERVENTION OF THE FEDERAL COURTS AT EQUITY

This case arises, in part, out of the deployment of Texas Rangers in response to the efforts of Mexi-

can American agricultural workers to organize into a union in order to obtain greater economic benefits for themselves.¹² As the district court has found, once deployed, the Texas Rangers colluded with local police authorities in a studied effort to break the strike and to deny the strikers their civil rights. A primary method employed by these police agencies was discriminatory and bad faith enforcement of various broad and vague state laws. In this brief, *amicus curiae* will show that such discriminatory and bad faith interferences by law enforcement personnel with the organizational and civil rights of Mexican Americans recur frequently throughout the history of the Southwest.

Ironically, the longest period of contact and conflict which the Mexican American in the United States has had with law enforcement agencies has been with the Texas Rangers who were organized in 1835.¹³ During the early years of the Rangers on the southern frontier of Texas, the Rangers

arrived with instinctive Teutonic directness, preferring the honest smash of the bullet to the subtlety of the knife. But against the Mexican, bluntness turned into brutality. . . .¹⁴

¹²This *amicus curiae* agrees with the arguments already submitted by the Appellees, and *amicus curiae* AFL-CIO.

¹³Guzmán 530.

¹⁴T. R. Fehrenbach, *Lone Star: A History of Texas and Texans* 473 (1968) [hereinafter cited as *Fehrenbach*].

During the period between the Mexican War¹⁵ and the turn of the century, the areas near the Mexican border were noted for their widespread violence and lawlessness. Although the personal and property rights of Mexican Americans were continually being violated mostly by non-Mexican Americans, they received no protection from law enforcement agencies, including the Texas Rangers.¹⁶

One specific but representative instance in which Mexican Americans made an effort to organize and protect their property and economic rights against Anglo encroachment and exploitation was the El Paso Salt War of 1878. Their efforts to assert their traditional right of using the salt beds were successfully suppressed by the Texas Rangers.¹⁷

W. P. Webb, one of the leading Texas historians and past president of the American Historical Association, considered by his peers to be the dean of Texas historians until his death in 1963, wrote the following in his authoritative volume on the Texas Rangers:

The Texans . . . easily convinced themselves, for example, that the Texas Rangers, knew best how

¹⁵The Texas Rangers also participated in the war with Mexico in 1846-1848. Their involvement moreover included the invasion of Mexico during which they assisted in the fighting. The many war atrocities and wanton acts of cruelty committed by the Texas Rangers in Mexico contributed to the legacy of hatred that remained after United States involvement had terminated. See *Acuña* 26-27.

¹⁶C. McWilliams, *North From Mexico: the Spanish-Speaking People of the United States* 108-110 (Greenwood Press ed. 1968), [hereinafter cited as *McWilliams*].

¹⁷*Acuña* 50-52.

to whip Mexicans. . . . The Texans demanded that the United States should muster the Rangers into federal service, pay them with federal money, and let them run all the Mexicans into the Rio Grande. . . .¹⁸

The first twenty-five years of this century were a part of American history Texans take no pride in, and no one likes. Rangers and local posses, in retaliation for real crimes against American lives and property, committed other crimes. The Rangers, out of tradition, history, and the emotions of the times, "shot first and investigated afterward." This action, serious as the times were, was no longer called for, as dozens of local law enforcement officers later testified.¹⁹

Between 1915 and 1917, many Rangers . . . waged persecutions. They by no means bore the whole guilt; local citizens and sheriffs, and even the army, shared in it. There were numerous cases of flogging, torture, threatened castration, and legalized murder. Even some of this was justified by events, since the Rangers faced some of the cruelest outlaws who ever lived. But enough of this reprisal fell on people innocent of any crime but the one of being Mexican to discredit the whole.²⁰

R. B. Creager of Brownsville, Republican National Committeeman from Texas, testified later that about 200 Mexicans had been executed without trial by Rangers, local officers, and citizens.

¹⁸W. P. Webb, *The Texas Rangers: A Century of Frontier Defense* 127 (University of Texas Press 2d ed. 1965) [hereinafter cited as Webb].

¹⁹Fehrenbach 691.

²⁰Fehrenbach 692.

He estimated that 90 percent of these had committed no crime. At this time, every male in these counties of Texas went armed with six-shooter or rifle. If an ethnic Mexican were found armed, however, he was sometimes accused of banditry and shot. No record exists of these executions, which were estimated to number between 200 and 5,000, because obviously no records were made or kept. Accounts do exist of the finding of many bodies here and there, and the burial of these.²¹

Many other historians also have pointed out the sad events which occurred during this era:

The lawlessness became so widespread that Secretary of State Hughes had to warn the governor of Texas that some action would have to be taken to protect Mexicans. . . .

Much of the lawlessness against Mexicans in Texas had an official or semi-official status, for the Texas Rangers had become a kind of "black-and-tan" constabulary bent on terrorizing the Mexican population.²²

Unknown to most Anglo-Texans who took pride in their famous Rangers, *Rinche* again assumed the proportion of a bugaboo in Spanish-speaking minds. Children were frightened with the term. Almost every lower-class ethnic Mexican alive in those years carried a violent, superstitious fear of Rangers, and the folk-hatred had permeated so deeply into all Mexicans that even third- and

²¹*Fehrenbach* 692.

²²*McWilliams* 113.

fourth-generation citizens, who had never actually seen a Ranger, reacted with an instinctive phobia toward the name.²³

Professor Webb, in his definitive history of the Rangers, commented:

The situation can be summed up by saying that after the troubles developed the Americans instituted a reign of terror against the Mexicans and that many innocent Mexicans were made to suffer . . .

In the orgy of bloodshed that followed, the Texas Rangers played a prominent part, and one of which many members of the force have been heartily ashamed. The reader would not be interested in a list of a hundred or more clashes, raids, murders, and fights that occurred between 1915 and 1920.²⁴

The violent acts committed by the Texas Rangers against Mexican Americans finally came to the formal attention of the Texas legislature.

In 1919, J. T. Canales, state representative from Brownsville, introduced a bill in the legislature to reorganize and upgrade the Ranger force. Canales was a member of an old landowning family; he professed no desire to destroy the Rangers, but to rid them of unqualified and vicious men and to remove the force from politics. An exhaustive investigation ensued, and at the end of it, the Rangers were badly discredited. A bill passed the legislature that in effect abolished the Texas

²³Fehrenbach 693.

²⁴Webb 478.

Rangers as the principal state police force and sharply reduced their numbers to 76 men.²⁵

Notwithstanding the investigation by the legislature and the legislation which ensued, the 1920's and 1930's were similar to the previous eras in which Mexican Americans experienced hostility at the hands of the Texas Rangers.²⁶ In 1936 law enforcement officials arrested Mexican American pecan shellers in San Antonio who were picketing in protest over a reduction of their wages.

Workers abandoned 130 plants throughout the West Side of San Antonio. Local law authorities backed management and arrested over 1000 pickets. The charges included blocking the sidewalks, disturbing the peace, unlawful assemblies, etc. "Within the first two weeks tear gas was used at least a half-dozen times to disperse throngs that milled around the shelleries." City officials even dug up an obscure city ordinance aimed at the sign-carrying picketers, which made it "unlawful for any person to carry . . . through any public street . . . any advertising . . ." until a permit had been obtained from the city marshal. It was a ludicrous situation, since the office of city marshal had been abolished some years before. Since the picketers did not have the necessary permit, they were arrested and fined \$10. . . . Police Chief Owen Kilday was determined to break the strike. . . .²⁷

²⁵Fehrenbach 693. See also Webb 513-16 and Guzmán 531.

²⁶A. J. Rubel, *Across the Tracks: Mexican-Americans in a Texas City* 47 (University of Texas Press ed. 1966) [hereinafter cited as *Rubel*].

²⁷Acuña 165-66.

In addition to their long history of general harassment and strike breaking directed at the Mexican American people, the Texas Rangers often frustrated Mexican American electoral efforts by breaking up their rallies, physically abusing Mexican American voters, and systematically intimidating and harassing Mexican Americans when they sought to exercise their political rights.²⁸ In 1963, Mexican Americans in Texas organized themselves politically and successfully asserted their electoral rights in Crystal City, a small agricultural community in the Rio Grande Valley where they constitute a vast majority of the population. For the first time, a significant number of Mexican Americans were elected to the city council. However, threats and harassment by the Texas Rangers subsequently contributed to the undermining of this achievement.²⁹

Because the actions of the Texas Rangers and the local police officials that have been documented in the case before this Court are so totally consistent with the historic expectations of the Mexican Americans, many Mexican Americans continue to perceive of the Rangers as

a force which was *designed* to curb and crush any sign of progress or independent action by members of the Mexican-American sociocultural group.³⁰

²⁸Acuña 252.

²⁹Guzmán 563.

³⁰Rubel 46 (Emphasis in original).

On the other hand, many of the Anglo citizens of Texas view the Rangers and all other police agencies quite differently. In the early 1960's the Anglos erected a monument to the Texas Rangers in Dallas' Love Field. Hence, today

[w]alking through the airport in Dallas is an insulting experience to a Chicano. In the center of the main lobby, there has been erected the unmistakable semblance of a Texas Ranger. On the pedestal . . . is the inscription: "One riot, one Ranger." The implication is clear.³¹

A similar history of law enforcement misconduct against Mexican American organizational efforts can be found throughout the Southwest.

In California the cantaloupe strike of 1928 by Mexican Americans in the Imperial Valley was broken by the wholesale arrests and deportations by the County Sheriffs.³² The berry strike of 1933 in El Monte, California, was another unionization effort by Mexican American laborers which failed as a result of law enforcement repression.³³

During the lettuce strike of 1934 in the Imperial Valley, the Sheriff's office, the local police, and the State Highway Police raided the desert camp of the strikers, burned their shacks, teargassed and forcibly evicted the workers.³⁴

The National Labor Board, when the trouble started in the valley, sent a commission of in-

³¹Rendón 219-220.

³²Acuña 158.

³³Acuña 160-64.

³⁴L. McWilliams, *Factories in the Field* 224 (Peregrine 1971) [hereinafter cited as *Factories*].

quiry . . . The Commission found that Constitutional rights had been openly disregarded by the law-enforcement agencies in the valley; that the right of free speech and assembly had been wholly suppressed; that excessive bail had been demanded of arrested strikers; that the State Vagrancy Law had been prostituted; and that a Federal Court injunction had been flouted.³⁵

During the San Joaquin Valley cotton strike of 1932, the role of the police was that of a force intervening in a partisan manner.

In this strike Mexicans accounted for approximately three-quarters of the work force. As the strike gained enough support to disrupt the harvest, growers began arming themselves. With deputies at their sides, they evicted strikers from farm labor camps. Local police assured the growers of their right to protect their property and undertook a program to keep the peace by strictly enforcing anti-picketing ordinances and arresting strike agitators. . . .

The subsequent investigations concluded that "without question, civil rights of strikers have been violated." A local under-sheriff revealed the basic assumptions of the law-enforcement forces about local social structure and about their own role: "We protect our farmers here in Kern County. They are our best people. They are always with us. They keep the county going. They put us here and they can put us out again so we serve them. But the Mexicans are trash. They have no standard of living. We herd them like pigs."³⁶

³⁵*Factories* 225.

³⁶*Guzmán* 531-32.

Carey McWilliams refers to the series of agricultural strikes throughout California during 1929-1935 in the following manner:

Beyond question, the strikes of these years are without precedent in the history of labor in the United States. Never before had farm laborers organized on any such scale and never before had they conducted strikes of such magnitude and such far-reaching social significance.³⁷

Nevertheless the vast majority of these strikes were unsuccessful due to the mass arrests and beatings of the organizers, the deputization of vigilantes, the mobilization and deployment of National Guard units, the threats of summary deportation, or the physical attacks by special deputies.³⁸

In Gallup, New Mexico, the coal strike of 1935 resulted in the declaration of martial law for six months although no violence was recorded; furthermore, some of the labor leaders were arrested and deported to Mexico.³⁹

In Arizona, many of the five thousand Mexican workers in the copper mines who went on strike in 1915 were arrested and the National Guard was used to destroy their strike.⁴⁰ During the Arizona copper

³⁷*Factories* 211.

³⁸*Factories* 211-29.

³⁹*McWilliams* 195. For a recent comprehensive survey of the history of violent interferences with the rights of Mexican Americans by government officials in New Mexico, see C. Knowlton. *Violence in New Mexico: A Sociological Perspective*, 58 Cal. L. Rev. 1054 (1970).

⁴⁰*McWilliams* 197

strike of 1917, more than one thousand strikers were shipped in box cars to Columbus, New Mexico.

The Columbus officials would not permit them to detrain so they were taken out and dumped in the desert. Investigating the strike some months later for the federal government, Felix Frankfurter reported that "too often there is a glaring inconsistency between our democratic purposes in this war abroad and the autocratic conduct of some at home."⁴¹

Colorado officials relied upon the assistance of vigilante groups to handle labor disputes in mining areas during the second and third decades of this century.⁴²

Mexican Americans also have been victims of summary and abusive treatment inflicted by state law enforcement agencies notwithstanding the existence of labor disputes. One committee of the California Legislature recently convened hearings concerning the relations in general between the police and Mexican Americans in California.⁴³ Throughout the three days of hearings, this committee was presented with numerous complaints alleging not only the unrestrained and excessive use of force by inadequately trained law enforcement officials but also interference with Mexican American organizational efforts.

⁴¹McWilliams 197.

⁴²Guzmán 531.

⁴³*Hearings on Relations Between the Police and Mexican Americans Before the California Assembly Select Committee on the Administration of Justice* (1972). See also, A. Morales, *Ando Sangrando . . . I Am Bleeding* (Perspectiva 1972); *Police-Community Relations in East Los Angeles, California: A Report of the California State Advisory Committee to the United States Commission on Civil Rights* (1970); *1970 Report*; and Guzmán.

Numerous and similarly blatant interferences by law enforcement agencies with Mexican American political and economic organizational efforts during the 1960's also have been documented throughout the Southwest.⁴⁴ The recent and most widely known interferences have occurred during the California grape strike of 1968⁴⁵ and the current lettuce strike and boycott.

When the facts in the instant case, as specifically found by the district court (347 F. Supp. 605, 611-618 (S.D. Tex. 1972)), are considered by themselves, it is clear that a proper occasion has been presented for the intervention of the equitable power of the federal courts. When these facts are considered in the more general historic context, the district court's obligation to intervene becomes compelling.

The facts in the instant case are so well documented as to place the district court's findings beyond any possibility of reversal on the ground that they were "clearly erroneous." Rule 52, Fed. Rules of Civ. Proc. Aside from the issue of the constitutionality of the state laws in question, the only issue before this Court, therefore, is whether the proven facts justify a federal court's issuing an injunction against enforcement of the state laws in question. And the only basis for any one to doubt at all the propriety of a federal court injunction in this case, is this Court's recent decisions in *Younger v. Harris*, 401 U.S. 37 (1971), and its companion cases. In those decisions the Court

⁴⁴1970 Report *supra* not 8, at 14-18.

⁴⁵Guzmán 532.

ruled that when a state criminal prosecution is pending, the possible facial unconstitutionality of the state statute, pursuant to which the prosecution is progressing, is not sufficient by itself to justify a federal court injunction, against good-faith enforcement of the statute, in a federal civil rights action brought by the criminal defendant after the state prosecution has commenced.

As the district court observed below: "*Younger* is not an abdication of the federal role in protecting citizens from 'official lawlessness.'" 347 F. Supp. at 610. It is a decision based on comity, whereby this Court simply recognized that in the ordinary course of events, each person must rely upon the usual state criminal processes to vindicate his or her constitutional claim. That this principle has no application to instances of massive official lawlessness like those found by the district court in the instant case, is demonstrated by the fact that, in *Younger*, this Court specifically concluded that its rule of comity was a function of the equitable principle that in order to secure an injunction a party had to demonstrate an "irreparable injury."

The inconvenience a criminal defendant may suffer from prosecution under an unconstitutional state law, does not amount to an irreparable injury that cannot be "remedied at law." Hence, when federal court plaintiffs seek to enjoin state criminal prosecutions, according to the Court, they may prove irreparable injury by demonstrating that the state officials are engaging in "bad faith prosecution and harassment."

401 U.S. at 49, 53. (Other possible proofs are discussed at 401 U.S. at 53-54.)

If the record in the instant case, as illuminated by the district court's findings, does not demonstrate the requisite "bad faith prosecution and harassment," amicus curiae submits that no record can meet that standard. Indeed, this case is a nearly perfect analogy to *Dombrowski v. Pfister*, 380 U.S. 479 (1965), which this Court reaffirmed in *Younger*, and used to illustrate application of the "bad faith" standard. *Younger*, 401 U.S. at 47-53.

Most notably, in two essential respects the circumstances of the instant case are exactly like those in *Dombrowski* and unlike those in *Cameron v. Johnson*, 390 U.S. 611 (1968), which was relied upon by the Appellants. See Brief of Appellants, 38-41. First, in *Cameron*, all arrests were followed by prosecutions uninterrupted by state authorities. In *Dombrowski*, the arrests were so patently unconstitutional that

. . . a state judge quashed the arrest warrants as not based on probable cause and discharged the appellants. Subsequently, the court granted a motion to suppress the seized evidence on the ground that the raid was illegal. Louisiana officials continued, however, to threaten prosecution of the appellants. . . .

Dombrowski, 380 U.S. at 488. In the instant case, no state court took such courageous steps.⁴⁶ However, the district court found that arrests frequently were

⁴⁶*Cf.*, Acuña 166, discussing the Texas state courts' failure to protect the Mexican American pecan shellers from the San Antonio police chief's unlawful interference with their pickets.

. . . followed by release without the filing of charges [thus] prevent[ing] those arrested from asserting their constitutional rights in defense of their conduct and obtaining a review of the state law. Similarly the dispersal of pickets under the threat of arrest effectively prevent[ed] a test of the state law and a review of their conduct and that of the police.

347 F. Supp. at 618. Such acts clearly render persons desiring a clarification of their constitutional rights without an adequate remedy at state law and evinced bad faith conduct by police authorities. *Cf., Hague v. C.I.O.*, 101 F.2d 774, 778 (3d Cir.), *aff'd*, 307 U.S. 496 (1939).

The second parallel between the instant case and *Dombrowski* pertains to the fact that in both cases the actions by the federal court defendants were continuous and general. In other words, their actions, including arrests and threats of arrest, were not limited to any particular circumstances and they were not responsive to any particularized actions of the plaintiffs. They constituted general harassment and an on-going threat. Further, in *Dombrowski*, the plaintiffs labored under a continuous threat of prosecution and harassment pursuant, as this Court ruled, to facially unconstitutionally broad and vague state subversion statutes. *Dombrowski*, 380 U.S. at 492-96. Similarly, in the instant case, the plaintiffs labored under a continuous threat of prosecution and harassment pursuant, as the district court correctly held, to a network of facially unconstitutionally broad and vague state picketing, obstructing the streets, breach

of the peace and unlawful assembly statutes. 347 F. Supp. at 620-634. By contrast, in *Cameron* only the Mississippi anti-picketing statute was involved, the arrests and prosecutions were limited to a single occasion, and they were in response to "picketing" that was clearly unlawful under the terms of the statute. *Cameron*, 390 U.S. at 614-15. Further, the district court in that case declared that the statute was not facially unconstitutional, and this Court affirmed. *Cameron*, 390 U.S. at 615-17.

CONCLUSION

The judgment below should be affirmed in all respects. The district court correctly entertained jurisdiction in the instant case. And for the reasons stated in the briefs of the Appellees and the AFL-CIO, the challenged statutes were properly declared unconstitutional, and their enforcement was enjoined.

Dated: November, 1973.

Respectfully submitted,

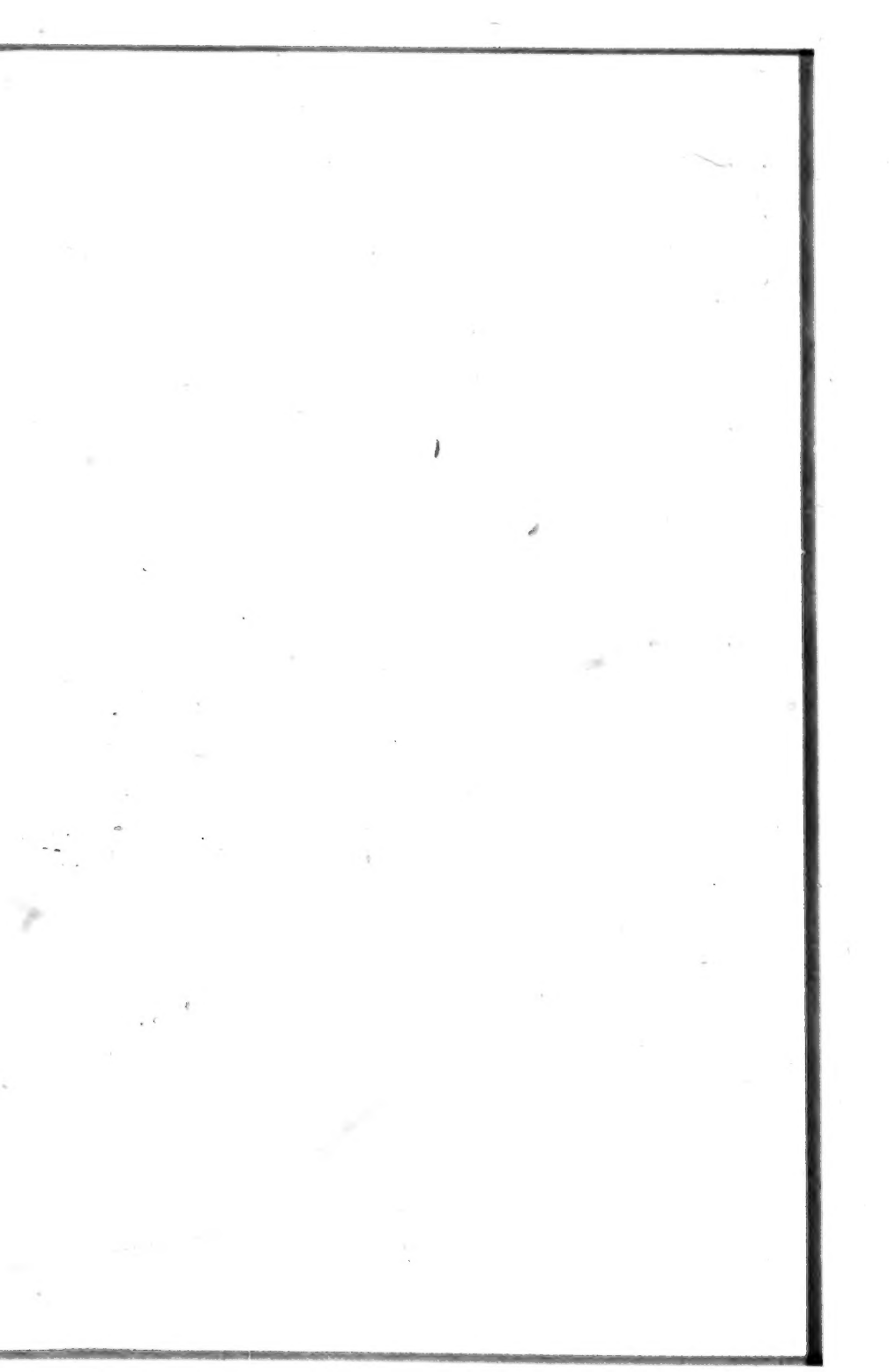
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ALLEE ET AL. v. MEDRANO ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS

No. 72-1125. Argued November 13, 1973—Decided May 20, 1974

Appellee union committee and the individual appellees, who attempted from June 1966 to June 1967 to unionize farmworkers and persuade them to support or join a strike, were subjected to persistent harassment and violence by appellants and other law enforcement officers. In July 1967 a state court issued a temporary injunction against appellees, proscribing picketing on or near property of one of the major employers in the area. Appellees brought this federal civil rights action, 42 U. S. C. §§ 1983, 1985, attacking the constitutionality of certain Texas statutes and alleging that appellants and the other officers conspired to deprive appellees of their First and Fourteenth Amendment rights. A three-judge District Court declared five of the statutes unconstitutional and enjoined their enforcement, and in addition permanently enjoined appellants and the other officers from intimidating appellees in their organizational efforts. *Held*:

1. The state court injunction did not moot the controversy, since it was the appellants' and the other officers' conduct, not the injunction, that ended the strike. Nor has the case become moot because appellees abandoned their unionization efforts as a result of the harassment, for appellee union still is a live organization with a continuing goal of unionizing farmworkers. Pp. 809-811.

2. The portion of the District Court's decree enjoining police intimidation of the appellees was an appropriate exercise of the court's equitable powers. Pp. 811-816.

(a) The three-judge court could properly consider the question of police harassment under concededly constitutional statutes and grant relief in the exercise of jurisdiction ancillary to that conferred by the constitutional attack on the statutes that plainly required a three-judge court. Pp. 811-812.

(b) This portion of the decree did not interfere with pending state prosecutions, so that special considerations relevant to cases like *Younger v. Harris*, 401 U. S. 37, do not apply, nor was there any requirement that appellees first exhaust state remedies before bringing their federal suit. P. 814.

(c) Irreparable injury was shown as evidenced by the District Court's unchallenged findings of police intimidation, and no remedy at law would adequately protect appellees from such intimidation in their lawful effort to unionize the farmworkers. Pp. 814-815.

(d) Where there is a persistent pattern of police misconduct, as opposed to isolated incidents, injunctive relief is appropriate. *Hague v. CIO*, 307 U. S. 496. Pp. 815-816.

3. The portion of the District Court's decree holding five of the state statutes unconstitutional with accompanying injunctive relief must be vacated. Pp. 816-820.

(a) Where three of the statutes have been repealed and replaced by more narrowly drawn provisions since the District Court's decision and there are no pending prosecutions under them, the judgment relating to these statutes will have become moot. Since it cannot be definitely determined from the District Court's opinion or the record whether there are pending prosecutions or even whether the District Court intended to enjoin them if there were, the case is remanded for further findings. If there are no pending prosecutions, the court should vacate the judgment as to the superseded statutes. If some are pending, the court should make findings as to whether they were brought in bad faith, and, if so, enter an appropriate decree subject to review both as to the propriety of federal court intervention and as to the merits of any holding striking down the statutes. Pp. 818-820.

(b) The case is remanded for a determination as to whether there are pending prosecutions under the two remaining statutes, and for further findings and reconsideration in light of *Steffel v. Thompson*, 415 U. S. 452. If there are pending prosecutions, the court should determine whether they were brought in bad faith. If there are only threatened prosecutions and only declaratory relief is sought, then *Steffel* controls and no *Younger* showing need be made. P. 820.

347 F. Supp. 605, affirmed in part, vacated in part, and remanded.

DOUGLAS, J., delivered the opinion of the Court, in which BRENNAN, STEWART, MARSHALL, and BLACKMUN, JJ., joined. BURGER, C. J., filed an opinion concurring in the result in part and dissenting in part, in which WHITE and REHNQUIST, JJ., joined, *post*, p. 821. POWELL, J., took no part in the decision of the case.

Larry F. York, First Assistant Attorney General of Texas, argued the cause for appellants. With him on

the brief were *John L. Hill*, Attorney General, and *Joe B. Dibrell*, *Lang A. Baker*, and *Gilbert J. Pena*, Assistant Attorneys General.

Chris Dixie argued the cause and filed a brief for appellees.*

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil rights action,¹ 42 U. S. C. §§ 1983, 1985, attacking the constitutionality of certain Texas statutes, brought by appellees. It alleges that the defendants, members of the Texas Rangers and the Starr County, Texas, Sheriff's Department, and a Justice of the Peace in Starr County, conspired to deprive appellees of their rights under the First and Fourteenth Amendments, by unlawfully arresting, detaining, and confining them without due process and without legal justification, and by unlawfully threatening, harassing, coercing, and physically assaulting them to prevent their exercise of the rights of free speech and assembly. A three-judge court was convened which declared five Texas statutes unconstitutional and enjoined their enforcement. 347 F. Supp. 605, 634. In addition, the court permanently enjoined the defendants from a variety of unlawful practices which formed the core of the alleged conspiracy. Five defendants, all members of the Texas Rangers, have perfected this appeal. 28 U. S. C. § 1253. The appellees

**John B. Abercrombie* and *William D. Deakins, Jr.*, filed a brief for *Brown & Root, Inc.*, et al. as *amici curiae* urging reversal.

J. Albert Woll, *Laurence Gold*, and *Thomas E. Harris* filed a brief for the American Federation of Labor and Congress of Industrial Organizations as *amicus curiae* urging affirmance.

¹ Jurisdiction in the District Court was based upon 28 U. S. C. § 1343, and a three-judge court was properly convened under 28 U. S. C. § 2281.

consist of the United Farm Workers Organizing Committee, certain named plaintiffs,² and the class they represented in the District Court on whose behalf the judgment was also rendered.³

From June 1966 until June 1967, the appellees were engaged in an effort to organize into the union the predominantly Mexican-American farmworkers of the lower Rio Grande Valley. This effort led to considerable local controversy which brought appellees into conflict with the state and local authorities, and the District Court found that as a result of the unlawful practices enjoined below the organizing efforts were crushed. This lawsuit followed.

The factual findings of the District Court are not challenged here. In early June 1966, at the beginning of the organizing effort, Eugene Nelson, one of the strikers' principal leaders, stationed himself at the International Bridge in Roma, Texas, attempting to persuade laborers from Mexico to support the strike. He was taken into custody by the Starr County Sheriff, detained for four hours, questioned about the strike, and was told he was under investigation by the Federal Bureau of

² Named in the caption were Francisco Medrano, Kathy Baker, David Lopez, Gilbert Padilla, Magdaleno Dimas, and Benjamin Rodriguez. Other individual plaintiffs were named in the body of the complaint.

³ The judgment was also rendered for all members of the plaintiff United Farmworkers Organizing Committee, AFL-CIO, and "all other persons who because of their sympathy for or voluntary support of the aims of said Plaintiff union have engaged in, are engaging in, or may hereafter engage in peaceful picketing, peaceful assembly, or other organizational activities of or in support of said Plaintiff union or who may engage in concert of action with one or more of Plaintiffs for the solicitation of agricultural workers or others to join or make common cause with them in matters pertaining to the work and labor of agricultural workers."

Investigation. No charges were ever filed against him. 347 F. Supp., at 612.

In October 1966, about 25 union members and sympathizers picketed alongside the Rancho Grande Farms exhorting the laborers to join the strike; they were ordered to disperse by the sheriffs although their picketing was peaceful. When Raymond Chandler, one of the union leaders, engaged an officer in conversation contesting the validity of the order, he was arrested under Art. 474 of the Texas Penal Code for breach of the peace. Although the maximum punishment for this offense is a \$200 fine, bond was set for Chandler at \$500. When two of Chandler's friends came to the courthouse to make bond, they were verbally abused, told they had no business there, and that if they did not leave they would be placed in jail themselves. 347 F. Supp., at 612-613. They left.⁴

Later that month, when the president of the local union and others were in the courthouse under arrest, they shouted "viva la huelga" in support of the strike. A deputy sheriff struck the union official and held a gun at his forehead, ordering him not to repeat those words in the courthouse because it was a "respectful place." *Id.*, at 613. As the strike continued through the year and the Texas Rangers were called in to the local area, there were more serious incidents of violence. In May 1967 some union pickets gathered in Mission, Texas, to protest the carrying of produce from the valley on the Missouri-Pacific Railroad. They were initially charged with trespass on private property; this was changed to unlawful assembly, and finally was superseded by complaints of secondary picketing. The Reverend Edgar

⁴ This was not the only abuse of the bonding process. Later when Eugene Nelson was arrested for threatening the life of a Texas Ranger, see *infra*, at 807, the deputy sheriff rejected for no valid reason a bond he knew was good.

Krueger and Magdeleno Dimas were taken into custody by the Rangers. As another train passed, the Rangers held these two prisoners' bodies so that their faces were only inches from the train. 347 F. Supp., at 615.

A few weeks later the Rangers sought to arrest Dimas for allegedly brandishing a gun in a threatening manner, and found him by "tailing" Chandler and Moreno, also union members. Chandler was arrested with no explanation as was Moreno, who was also assaulted by Captain Allee at the time. These two men were later charged with assisting Dimas to evade arrest, although by Allee's own testimony they were never told Dimas was sought by the Rangers. Indeed, because the officers had no arrest warrant or formal complaint against Dimas, they could not then arrest him, so they put in a call to a justice of the peace who arrived on the scene and filled out a warrant on forms he carried with him. The Rangers then broke into the house and arrested Dimas and Rodriguez, another union member, in a violent and brutal fashion. Dimas was hospitalized four days with a brain concussion, and X-rays revealed that he had been struck so hard on the back that his spine was curved out of shape. Rodriguez had cuts and bruises on his ear, elbow, upper arm, back, and jaw; one of his fingers was broken and the nail torn off. *Id.*, at 616-617.

Earlier, in May, Nelson had gone down to the Sheriff's office, according to appellees, to complain that the Rangers were acting as a private police force for one of the farms in the area. The three-judge District Court found that Nelson was then arrested and charged with threatening the life of certain Texas Rangers, despite the fact that Captain Allee conceded there was no serious threat. Allee had directed that the charges be filed to protect the Rangers from censure if something happened to Nelson. *Id.*, at 615.

During this entire period the Starr County Sheriff's office regularly distributed an aggressive anti-union newspaper. A deputy driving an official car would pick up the papers each week and bring them back to the Sheriff's office; they would then be distributed by various deputies. *Id.*, at 617. The District Court included copies of the paper in an appendix to its opinion; a typical headline was "Only Mexican Subversive Group Could Sympathize with Valley Farm Workers." The views of the Texas Rangers were similarly explicit. On a number of occasions they offered farm jobs to the union leaders, at the union demand wage, in return for an end to the strike. *Id.*, at 613, 614. The Rangers told one union member that they had been called into the area to break the strike and would not leave until they had done so. *Id.*, at 613.

Among other findings of the three-judge District Court were that the defendants selectively enforced the unlawful assembly law, Art. 439 of the Texas Penal Code, treating as criminal an inoffensive union gathering, 347 F. Supp., at 613; solicited criminal complaints against appellees from persons with no knowledge of the alleged offense, *id.*, at 615; and filed baseless charges against one appellee for impersonating an officer.⁵

The three-judge District Court found that the law enforcement officials "took sides in what was essentially a labor-management controversy." *Id.*, at 618. Although there was virtually no evidence of assault upon

⁵ Deputy Paul Pena filed these charges against Reynaldo De La Cruz although Pena had never seen the offense, which was wearing a badge around the union hall. The badge in question was shield type, while those worn by the officers were of the star type, and Pena conceded that he knew that De La Cruz and Dimas had worn similar badges when directing traffic at union functions. 347 F. Supp., at 616.

anyone by union people during the strike, the officials "concluded that the maintenance of law and order was inextricably bound to preventing the success of the strike." *Ibid.* Thus, these were not a series of isolated incidents but a prevailing pattern throughout the controversy.

I

It is argued that a state injunction⁶ against the appellees, issued on July 11, 1967, ended the strike and thus rendered the controversy moot. That is not the case.

After summarizing the defendants' unlawful practices, the District Court concluded that "[t]he union's efforts collapsed under this pressure in June of 1967 and this suit was filed in an effort to seek relief." *Ibid.* Thus it was the defendants' conduct, which is the subject of this suit, that ended the strike, not the state court injunction, which came afterward. With the protection of the federal court decree, appellees could again begin their efforts.

Moreover, the state court injunction is quite limited. It proscribes picketing by the appellees and those acting in concert with them only on or near property owned by La Casita Farms, Inc., the plaintiff in the state case. But the appellants agreed at oral argument that La Casita is *only one of the major employers in the area*, and some of the incidents involved occurred at other locations. Moreover the state court injunction was only temporary, and on appeal the Texas Court of Civil Appeals, after finding that most of the trial court findings were unsupported, affirmed only because of the limited nature of review, under Texas law, of a temporary injunction. The appellate court concluded that "nothing in this

⁶ *La Casita Farms, Inc. v. United Farm Workers Organizing Comm.*, Dist. Ct. of Starr County, Texas, No. 3809, July 11, 1967. Appellants' exhibit D-1 in the District Court.

opinion is to be taken as a ruling that the evidence before us would support the issuance of a permanent injunction" *United Farm Workers Organizing Comm. v. La Casita Farms, Inc.*, 439 S. W. 2d 398, 403. We were advised at oral argument that no permanent injunction against picketing has ever been issued, and we cannot assume that one will be.

Nor can it be argued that the case has become moot because appellees have abandoned their efforts as a result of the very harassment they sought to restrain by this suit. There can be no requirement that appellees continue to subject themselves to physical violence and unlawful restrictions upon their liberties throughout the pendency of the action in order to preserve it as a live controversy. In the face of appellants' conduct, appellees sought to vindicate their rights in the federal court. In June 1967 they rechanneled their efforts from direct attempts at unionizing the workers to seeking the protection of a federal decree, and hence they brought this suit. In their amended complaint, filed in October 1967, they charged that the defendants' conduct, aimed at all those who make common cause with appellees, "chill[ed] the willingness of people to exercise their First Amendment rights," resulting, as the three-judge District Court found, in the "collapse" of the union drive. Appellees continued to prosecute the suit and won a judgment in December 1972. We may not assume that because during this period they directed their efforts to the judicial battle, they have abandoned their principal cause. Rather the very purpose of the suit was to seek protection of the federal court so that the efforts at unionization could be renewed. It is settled that an action for an injunction does not become moot merely because the conduct complained of has terminated, if there is a possibility of recurrence, since otherwise the

defendants "would be free to return to ' . . . [their] old ways.' " *Gray v. Sanders*, 372 U. S. 368, 376; *Walling v. Helmerich & Payne, Inc.*, 323 U. S. 37, 43; *United States v. W. T. Grant Co.*, 345 U. S. 629, 632; *NLRB v. Raytheon Co.*, 398 U. S. 25, 27; *SEC v. Medical Committee for Human Rights*, 404 U. S. 403, 406. The appellee union remains very much a live organization and its goal continues to be the unionization of farmworkers. The essential controversy is therefore not moot, but very much alive.

II

We first consider the provisions of the federal court decree enjoining police intimidation of the appellees.⁷

⁷ "It is further ordered, adjudged and decreed by the Court that Defendants, their successors, agents and employees, and persons acting in concert with them, are permanently enjoined and restrained from any of the following acts or conduct directed toward or applied to Plaintiffs and the persons they represent, to-wit:

"A. Using in any manner Defendants' authority as peace officers for the purpose of preventing or discouraging peaceful organizational activities without adequate cause.

"B. Interfering by stopping, dispersing, arresting, or imprisoning any person, or by any other means, with picketing, assembling, solicitation, or organizational effort without adequate cause.

"C. Arresting any person without warrant or without probable cause which probable cause is accompanied by intention to present appropriate written complaint to a court of competent jurisdiction.

"D. Stopping, dispersing, arresting or imprisoning any person without adequate cause because of the arrest of some other person.

"E. As used in this Paragraph 16, Subparagraphs A, B and D above, the term 'adequate cause' shall mean (1) actual obstruction of a public or private passway, road, street, or entrance which actually causes unreasonable interference with ingress, egress, or flow of traffic; or (2) force or violence, or the threat of force or violence, actually committed by any person by his own conduct or by actually aiding, abetting, or participating in such conduct by another person; or (3) probable cause which may cause a Defendant to believe in good faith that one or more particular persons did violate a criminal

This part of the decree complements the other relief, in that it places boundaries on all police conduct, not just that which is based upon state statutes struck down by the federal court. The complaint charged that the enjoined conduct was but one part of a single plan by the defendants, and the District Court found a pervasive pattern of intimidation in which the law enforcement authorities sought to suppress appellees' constitutional rights. In this blunderbuss effort the police not only relied on statutes the District Court found constitutionally deficient, but concurrently exercised their authority under valid laws in an unconstitutional manner. While it is argued that a three-judge District Court could not properly be convened if police harassment under concededly constitutional statutes were the only question presented to it, it could properly consider the question and grant relief in the exercise of jurisdiction ancillary to that conferred by the constitutional attack on the state statutes which plainly required a three-judge court.*

law of the State of Texas other than those specific laws herein declared unconstitutional, or a municipal ordinance."

* It is argued that *Public Service Comm'n v. Brashear Lines*, 312 U. S. 621, holds that there is no ancillary jurisdiction in three-judge courts. In *Brashear* the plaintiffs refused to pay fees assessed under the statute challenged in their suit; when their attack on the statute failed the defendants sought damages, and the Court held that the damages action should have been heard by a single district judge. This was not a proper exercise of ancillary jurisdiction because the defendants' claim was completely unrelated to the basis on which the three-judge court was convened, and there was no purpose to be served by having it determined by the same tribunal. But we have held that "[o]nce [a three-judge court is] convened the case can be disposed of below or here on any ground, whether or not it would have justified the calling of a three-judge court." *United States v. Georgia Public Service Comm'n*, 371 U. S. 285, 287-288. Indeed, the three-judge court is required to hear the nonconstitutional attack upon the statute, *Florida Lime Growers v. Jacobsen*, 362

That part of the decree in question here prohibits appellants from using their authority as peace officers to arrest, stop, disperse or imprison appellees, or otherwise interfere with their organizational efforts, without

U. S. 73, 85; *Rosado v. Wyman*, 397 U. S. 397, 402. The instant case is nearly identical to *Milky Way v. Leary*, 397 U. S. 98, in which we considered and summarily affirmed the judgment of a three-judge court regarding the assertedly illegal application of a New York statute which was concededly constitutional; this decision was rendered in the exercise of ancillary jurisdiction acquired as a result of a facial attack on a different but related state statute. 305 F. Supp. 288, 296. The part of the decree enjoining police misconduct is intimately bound up with and ancillary to the remainder of the court's judgment, and even *Brashear* held that the court has jurisdiction to hear every question pertaining to the prayer for the injunction "in order that a single lawsuit may afford final and authoritative decision of the controversy between the parties." 312 U. S., at 625 n. 5.

This view was followed in *Perez v. Ledesma*, 401 U. S. 82, in which a three-judge District Court had sustained a state obscenity statute against the federal constitutional attack that provided the basis for convening it. But the District Court went on to determine that the arrests of the plaintiffs and the seizures incident thereto were unconstitutional because no prior adversary hearing had been held, 304 F. Supp. 662, 667 (ED La.), and therefore issued an order suppressing the evidence in the state court case. We reviewed that order on the merits, assuming it was properly before us as an appeal "from an order granting or denying . . . an interlocutory or permanent injunction in any civil" action required to be heard by a three-judge court. See 401 U. S., at 89 (STEWART, J., concurring). The basis for ancillary jurisdiction here is at least as compelling.

It is true that we also held in *Perez* that an order striking down a local parish ordinance was not properly before us. But that was an attack on a wholly different enactment not involving detailed factual inquiries common with and ancillary to the constitutional challenge on the state law supporting the three-judge court's jurisdiction. And central to our determination was the finding that the order regarding the parish ordinance "was not issued by a three-judge court, but rather by Judge Boyle, acting as a single district judge." 401 U. S., at 87. That is obviously not the case here.

"adequate cause." Adequate cause is defined as (1) actual obstruction of public or private passways causing unreasonable interference, (2) force or violence, or threat thereof, actually committed by an appellee, or the aiding and abetting of such conduct, or, (3) probable cause to believe in good faith that a criminal law of the State of Texas has been violated, other than the ones struck down in the remainder of the decree. On its face the injunction does no more than require the police to abide by constitutional requirements; and there is no contention that this decree would interfere with law enforcement by restraining the police from engaging in conduct that would be otherwise lawful.

Thus the only question before us is whether this was an appropriate exercise of the federal court's equitable powers. We first note that this portion of the decree creates no interference with prosecutions pending in the state courts, so that the special considerations relevant to cases like *Younger v. Harris*, 401 U. S. 37, do not apply here. Nor was there any requirement that appellees first exhaust state remedies before bringing their federal claims under the Civil Rights Act of 1871 to federal court. *McNeese v. Board of Education*, 373 U. S. 668; *Monroe v. Pape*, 365 U. S. 167. Nonetheless there remains the necessity of showing irreparable injury, "the traditional prerequisite to obtaining an injunction" in any case. *Younger, supra*, at 46.

Such a showing was clearly made here as the unchallenged findings of the District Court show. The appellees sought to do no more than organize a lawful union to better the situation of one of the most economically oppressed classes of workers in the country. Because of the intimidation by state authorities, their lawful effort was crushed. The workers, and their leaders and organizers were placed in fear of exercising their

constitutionally protected rights of free expression, assembly, and association. Potential supporters of their cause were placed in fear of lending their support. If they were to be able to regain those rights and continue furthering their cause by constitutional means, they required protection from appellants' concerted conduct. No remedy at law would be adequate to provide such protection. *Dombrowski v. Pfister*, 380 U. S. 479, 485-489.

Isolated incidents of police misconduct under valid statutes would not, of course, be cause for the exercise of a federal court's equitable powers. But "[w]e have not hesitated on direct review to strike down applications of constitutional statutes which we have found to be unconstitutionally applied." *Cameron v. Johnson*, 390 U. S. 611, 620, citing *Cox v. Louisiana*, 379 U. S. 559; *Wright v. Georgia*, 373 U. S. 284; *Edwards v. South Carolina*, 372 U. S. 229. Where, as here, there is a persistent pattern of police misconduct, injunctive relief is appropriate. In *Hague v. Committee for Industrial Organization*, 307 U. S. 496, we affirmed the granting of such relief under strikingly similar facts. There also law enforcement officials set out to crush a nascent labor union. The police interfered with the lawful distribution of pamphlets, prevented the holding of public meetings, and ran some labor organizers out of town. The District Court declared some of the municipal ordinances unconstitutional. In addition, it enjoined the police from "exercising personal restraint over [the plaintiffs] without warrant or confining them without lawful arrest and production of them for prompt judicial hearing . . . or interfering with their free access to the streets, parks, or public places of the city," or from "interfering with the right of the [plaintiffs], their agents and those acting with them, to communicate their views as individuals

to others on the streets in an orderly and peaceable manner." *Id.*, at 517. The lower federal courts have also granted such relief in similar cases.⁹

For reasons to be stated, that portion of this relief based on holdings that certain state statutes are unconstitutional should be modified. In all other respects this portion of the District Court decree was quite proper.¹⁰

III

Finally, we consider the portion of the District Court's judgment declaring five Texas statutes unconstitutional, with the accompanying injunctive relief. We have been pressed with arguments by the appellants that these parts of the decree are inconsistent with the teachings of *Younger v. Harris*, 401 U. S. 37, and *Samuels v. Mackell*, 401 U. S. 66. For reasons explained below, it is unnecessary to reach these contentions at present.

Younger and its companion cases are grounded upon the special considerations which apply when a federal

⁹ In *NAACP v. Thompson*, 357 F. 2d 831 (CA5), the Court of Appeals reversed the denial of relief by the District Court concluding that defendants believed that plaintiffs' demonstrations "must be suppressed and that, in order to do so, they intend to take advantage of any law or ordinance, however inapplicable or however slight the transgression, and to continue to harass and intimidate [the] plaintiffs." *Id.*, at 838. The findings here show at least that much. In *Lankford v. Gelston*, 364 F. 2d 197 (CA4) (en banc), the court ordered the police enjoined from making searches without probable cause after concluding that the "raids were not isolated instances undertaken by individual police officers." *Id.*, at 202. See also *Wolin v. Port of New York Authority*, 392 F. 2d 83 (CA2).

¹⁰ There was no challenge here to the District Court's conclusion that this was a proper class action, see n. 14, *infra*. Moreover as to this portion of the decree, directed at police misconduct generally rather than to any particular state statute, named plaintiffs intimidated by misconduct may represent all others in the class of those similarly abused, without regard to the asserted state statutory basis for the police actions.

court is asked to intervene with pending state criminal prosecutions. *Steffel v. Thompson*, 415 U. S. 452. Although both parties here have assumed the relevance of *Younger*, we have been unable to find any precise indication in the District Court opinion or in the record that there were pending prosecutions at the time of the District Court decision. Indeed, the chronology of events gives rise to the contrary inference. Although the District Court issued its opinion in December 1972, the union effort which was the source of this contest had been interrupted more than five years earlier. It seems likely that any state prosecutions initiated during the effort would have been concluded by that time unless they had been restrained by a temporary order of the federal court. But there is no indication that such an order was ever issued. Moreover, the injunctive relief granted does not appear to be directed at restraining any state court proceedings.¹¹

¹¹ The decree is not directed at any state prosecutors or state judges with the exception of one justice of the peace whose involvement apparently consisted of issuing warrants without proper basis. Moreover it does not in terms restrain any prosecutions, but only the "arresting, imprisoning, filing criminal charges, threatening to arrest, or ordering or advising or suggesting that [appellees] disperse under authority of any portion of" the statutes struck down. A reading of the complaint suggests that no injunctive relief against pending prosecutions was ever requested. As to whether there in fact were pending prosecutions, our only guidance from the District Court is a passing reference that "plaintiffs [are] now facing charges in the Texas courts . . .," 347 F. Supp., at 620, but it is impossible to determine against whom any charges might be pending. Indeed, in light of the District Court's failure to treat the statutes separately in their findings of harassment, we cannot be certain that their reference to pending charges here is a finding that there are charges pending under each of the statutes. And if there are state charges pending, we could do no more than speculate as to why trial never commenced during the five-year pendency of the federal suit. This may be the result of an informal agreement with the federal court, or it may indicate

If in fact there were no pending prosecutions, the relief could have impact only on future events in which the challenged statutes might be invoked by the appellants. Since this remains a live, continuing controversy, such relief would ordinarily be appropriate if justified by the merits of the case. *Gray v. Sanders*, 372 U. S. 368, 376. But here we have a special situation, for three of the statutes in question have since been repealed by the Texas Legislature. Article 474 of the Penal Code, the breach-of-the-peace provision, has been replaced by §§ 42.01, 42.03, and 42.05 in the new codification; Art. 482, the abusive-language statute, has been replaced by § 42.01; and Art. 439, the unlawful-assembly provision, has been replaced by § 42.02. These new enactments, which replaced the earlier statutes as of January 1, 1974, are more narrowly drawn than their predecessors. Whatever the merits of the District Court's conclusions on the earlier statutes, any challenge to the new provisions presents a different case.

Thus, although there was a live controversy as to these statutes at the time of the District Court decree, if there are no pending prosecutions under the old statutes, the portions of the District Court's judgment relating to them has become moot.¹² But because we cannot determine with certainty whether there are pending prosecutions, or even whether the District Court intended to enjoin them if there were, the proper disposition is to remand the case to the District Court for further find-

that the State has abandoned any intention to bring these cases to trial. Indeed it may be that state law would bar prosecutions now after such a delay. See Tex. Const., Art. 1, § 10, and Tex. Code Crim. Proc. Art. 32.01. It is therefore appropriate to remand to the District Court for further findings on this question.

¹² In the federal system an appellate court determines mootness as of the time it considers the case, not as of the time it was filed. *Roe v. Wade*, 410 U. S. 113, 125.

ings. Cf. *Diffenderfer v. Central Baptist Church*, 404 U. S. 412. If there are no pending prosecutions *under these superseded statutes*, the District Court should vacate both the declaratory and injunctive relief as to them. If there are pending prosecutions remaining against any of the appellees,¹³ then the District Court should make findings as to whether these particular prosecutions were brought in bad faith, with no genuine expectation of conviction.¹⁴ If it so finds, the court will

¹³ If there are pending prosecutions against members of the class not named in the action, the District Court must find that the class was properly represented. Appellants stipulated in District Court that "plaintiffs are properly representative of the class they purport to represent." Document 33, ¶2, record on appeal. In this regard we note that the union was itself a named plaintiff, and the judgment was issued on behalf of all of its members.

In this case the union has standing as a named plaintiff to raise any of the claims that a member of the union would have standing to raise. Unions may sue under 42 U. S. C. § 1983 as persons deprived of their rights secured by the Constitution and laws, *American Fed. of State, Co., & Mun. Emp. v. Woodward*, 406 F. 2d 137 (CA8), and it has been implicitly recognized that protected First Amendment rights flow to unions as well as to their members and organizers. *Carpenters Union v. Ritter's Cafe*, 315 U. S. 722; cf. *NAACP v. Button*, 371 U. S. 415, 428. If, as alleged by the union in its complaint, its members were subject to unlawful arrests and intimidation for engaging in union organizational activity protected by the First Amendment, the union's capacity to communicate is unlawfully impeded, since the union can act only through its members. The union then has standing to complain of the arrests and intimidation and bring this action.

¹⁴ See *Dombrowski v. Pfister*, 380 U. S. 479, 490: "[A]ppellants have attacked the good faith of the appellees in enforcing the statutes, claiming that they have invoked, and threaten to continue to invoke, criminal process without any hope of ultimate success, but only to discourage appellants' civil rights activities." See also *Cameron v. Johnson*, 390 U. S. 611, 619-620, and *Perez v. Ledesma*, 401 U. S. 82, 118 n. 11 (separate opinion of BRENNAN, J.).

enter an appropriate decree which this Court may ultimately review, both as to the propriety of federal court intervention in the circumstances of the case, and as to the merits of any holding striking down the state statutes.

As to the two remaining statutes, Texas Civil Statutes, Arts. 5154d and 5154f, it is not necessary for other reasons for us at this time to reach any *Younger* questions or the merits of the decision below as to the statutes' constitutionality. As to these also we must remand for a determination as to whether there are pending prosecutions, although if there are none the appellees might still be threatened with prosecutions in the future since these statutes are still in force. But if there are only threatened prosecutions, and the appellees sought only declaratory relief as to the statutes, then the case would not be governed by *Younger* at all, but by *Steffel v. Thompson*, 415 U. S. 452, decided this Term.¹⁵ The District Court, of course, did not have the benefit of our opinion in *Steffel* at the time of its decision. We therefore think it appropriate to vacate the judgment of the District Court as to these statutes and remand for further findings and reconsideration in light of *Steffel v. Thompson*. If there are pending prosecutions then the District Court should determine whether they were brought in bad faith, for the purpose of harassing appellees and deterring the exercise of First Amendment rights, so that allowing the prosecutions to proceed will result in irreparable injury to the appellees. If there are no pending prosecutions and only declaratory relief is sought, then *Steffel* clearly controls and no *Younger* showing need be made.

¹⁵ We do not reach the question reserved in *Steffel* as to whether a *Younger* showing is necessary to obtain injunctive relief against threatened prosecutions. See generally Note, Federal Relief Against Threatened State Prosecutions: The Implications of *Younger*, *Lake Carriers and Roe*, 48 N. Y. U. L. Rev. 965 (1973).

In summary, we affirm the decree granting injunctive relief against police misconduct, with appropriate modifications to delete reference to the five statutes held unconstitutional by the District Court. We vacate the District Court's judgment as to those five statutes, and remand for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE POWELL took no part in the decision of this case.

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE WHITE and MR. JUSTICE REHNQUIST join, concurring in the result in part and dissenting in part.

On June 1, 1966, appellee United Farm Workers Organizing Committee, AFL-CIO (the Union), called a strike of farmworkers in Starr County, Texas. After the strike collapsed a year later the Union and six individuals active in the strike¹ brought this action in United States District Court for the Southern District of Texas against five Texas Rangers, the Sheriff, two Deputy Sheriffs, and a Special Deputy of Starr County, Texas, and a Starr County Justice of the Peace, alleging that the defendants unlawfully suppressed the plaintiffs and the class of Union members and sympathizers they purported to represent in the exercise of their First and Fourteenth Amendment rights of free speech and association during the strike.² The suppression was alleged to have been caused in part through the enforcement of six Texas statutes which plaintiffs claimed to have been unconstitutional. The District Court, convened as a

¹ Francisco Medrano, Kathy Baker, David Lopez, Gilbert Padilla, Magdaleno Dimas, Benjamin Rodriguez.

² Jurisdiction is alleged under 28 U. S. C. §§ 1343, 2201, 2202, 2281, and 2284, and 42 U. S. C. §§ 1983 and 1985.

three-judge court, agreed with plaintiffs as to five of the statutes³ and declared them to be unconstitutional and enjoined their enforcement. The District Court also entered an injunction prohibiting acts of misconduct by defendants and those associated with them. 347 F. Supp. 605 (SD Tex. 1972). The five Texas Rangers appealed the District Court's judgment to this Court. We noted probable jurisdiction. 411 U. S. 963 (1973).

The Court today vacates the judgment of the District Court as it deals with the relief granted against the enforcement of the statutes, and remands for further findings and for reconsideration, in the case of the relief granted with respect to two of the statutes, in light of *Steffel v. Thompson*, 415 U. S. 452 (1974). In so doing the Court avoids significant legal issues which are fairly presented in this appeal and which must be resolved now. They deserve full treatment for the benefit not only of the District Court on remand but of other courts that must wrestle with the myriad problems presented in applying the doctrine of *Younger v. Harris*, 401 U. S. 37 (1971). I undertake to deal with some of those issues. The Court neither accepts nor rejects my reasoning and ultimate resolution of the issues; the majority simply chooses not to reach the issues. I, therefore, concur only in the result of the remand. The Court also affirms the decree granting injunctive relief against police misconduct as slightly modified to reflect the remand. For the reasons stated below I dissent from that result.

I

The facts as found by the District Court are not in dispute. A review of those facts is necessary for an

³ Tex. Penal Code, Arts. 439 (unlawful assembly), 474 (breach of the peace), and 482 (abusive language) (1952), and Tex. Rev. Civ. Stat., Arts. 5154d (mass picketing) and 5154f (secondary picketing and boycotting) (1971).

understanding of some of the difficult legal issues in this appeal.

(a) On June 8, 1966, one Eugene Nelson, a strike leader, was taken into custody and detained for four hours without any charges being filed against him. While in custody he was questioned about his strike activities and informed that the Federal Bureau of Investigation would be investigating him regarding alleged threats of violence against the local courthouse and buses used to transport Mexican farmworkers to their jobs. When taken into custody, Nelson was at an international bridge attempting to persuade workers to join the strike.

(b) Another Union leader, Raymond Chandler, was arrested on October 12, 1966, at a picketing site when he refused to obey an order to disperse and became involved in an altercation using loud and vociferous language to a deputy sheriff of Starr County. Chandler was apparently arrested for violating Tex. Penal Code, Art. 474, the disturbing the peace statute. Bond was set at \$500 although the maximum punishment for violation of Art. 474 is a \$200 fine. Two of Chandler's friends who came to the courthouse to make bond were verbally abused and threatened with arrest by deputy sheriffs.

(c) On October 24, 1966, a deputy sheriff used violence and the threat of deadly force to subdue the president of the local Union who had just, while under arrest and in custody in a courthouse, shouted out "viva la huelga" with some fellow arrestees.

(d) On November 9, 1966, the Texas Rangers, who had by this time been called in to help keep peace and order during the pendency of the strike, served a warrant of arrest on a Reynaldo De La Cruz, charging a violation of Tex. Rev. Civ. Stat., Art. 5154f on November 3, 1966, when members of the Union picketed produce packing sheds located on Missouri Pacific Rail-

road tracks. While De La Cruz was under arrest two Texas Rangers made anti-union statements to the arrestee.

(e) Charges were filed by a deputy sheriff against Reynaldo De La Cruz on December 28, 1966, for impersonating an officer by wearing a badge in and around the Union hall. The deputy had not witnessed the offense; the badge was of the shield type, while sheriff's deputies and Texas Rangers wore badges in the shape of stars. The deputy who filed the charges admitted that he was aware of his own knowledge that similar badges had been worn by De La Cruz and another when directing traffic at Union functions. Also on that date Librado De La Cruz attempted to grab a nonstriking farm employee by the coat, and was arrested immediately and charged with assault.

(f) On the evening of January 26, 1967, about 20 Union supporters were gathered at the Starr County Courthouse to conduct a peaceful prayer vigil in protest of arrests of Union members earlier that day. Two members of the group mounted the courthouse steps, and when the group was ordered by a sheriff's deputy to leave the courthouse grounds, the two on the steps refused and were arrested for unlawful assembly, apparently in violation of Tex. Penal Code, Art. 439. One of the two arrested was Gilbert Padilla, the first of the named plaintiffs to enter the chronology. The other was a minister.

(g) On February 1, 1967, nine persons were arrested and charged with disturbing the peace, apparently in violation of Tex. Penal Code, Art. 474, for exhorting field laborers to quit work.

(h) Three months later, on May 11, 1967, other events occurred: appellant Captain A. Y. Allee of the Texas Rangers informed picketing strikers that he could get them

a job within 10 minutes at the Union-demanded wage. Also on that day a Texas Ranger shoved two persons connected with the strike, including one of the named plaintiffs, David Lopez. Both those shoved attempted to file charges of assault but the county attorney determined that there was insufficient evidence to go forward with the complaint.

(i) On the following day, May 12, 1967, strikers were allowed to peacefully picket in accordance with Tex. Rev. Civ. Stat., Art. 5154d, the mass picketing statute, and were allowed to depart after being detained for a short period of time at the picketing site.

(j) On May 12, 1967, Eugene Nelson was arrested for threatening the life of certain Texas Rangers although appellant Allee did not take the threat seriously, and a bond was not accepted until tax records could be checked following the weekend, although there was no valid reason for waiting since the deputy sheriff to whom the bond was tendered knew full well that the surety was a landowner and a person of substance in Starr County.

(k) On May 26, 1967, 14 persons were arrested for trespassing. The charge was later changed to unlawful assembly, and this charge was superseded by a secondary picketing and boycott charge. Ten persons were arrested when they allegedly attempted to block a train carrying produce. The second group of four persons was arrested later in the evening. The four were apparently arrested for unsuccessfully encouraging bystanders to picket and were ultimately charged with secondary picketing and boycotting upon the complaint of a railroad special agent who had left the scene prior to the events which caused this second series of arrests. Included in the group was Magdaleno Dimas, another named plaintiff. The findings recite that a Mrs. Krueger, another one of this second group, was arrested "either for

taking a picture of her husband's arrest or attempting to strike Captain Allee with her camera in her husband's defense." 347 F. Supp., at 615. The four arrestees in the second group were roughly handled. The findings concerning this entire incident are not set out with clarity.

(l) On May 31, 1967, the Texas Rangers arrested apparently 13 pickets for allegedly violating the mass picketing statute, Tex. Rev. Civ. Stat., Art. 5154d.

(m) On June 1, 1967, the Texas Rangers sought and arrested Magdaleno Dimas at the home of Kathy Baker, another named plaintiff, for allegedly having previously brandished a gun in a threatening manner in the presence of a special deputy of Starr County. Two other persons were arrested for assisting Dimas to evade arrest. Benjamin Rodriguez, a third named plaintiff, was arrested at the same time the police apprehended Dimas, although the District Court does not explain why Rodriguez was arrested. The arrests of Dimas and Rodriguez were found by the District Court to have been accomplished in a brutal and violent fashion.

(n) While the strike was in progress the Starr County Sheriff's office assisted in the regular distribution of a strongly anti-union newspaper. Each week deputies would pick up and then locally distribute copies of the paper.

II

In this part, I consider the problems of mootness and standing. In Part III I discuss *Younger v. Harris*, 401 U. S. 37 (1971), and its applicability to the facts of the instant case. The injunction against police misconduct is dealt with in Part IV.

The principal relief granted by the District Court was the declaration that five Texas statutes are unconstitutional and the injunction against their continued enforcement. The District Court determined on the

facts as it found them that appellees had overcome the burden imposed by *Younger v. Harris*, *supra*, and the court was, therefore, empowered to reach the merits of the constitutional challenges to the statutes. Although the District Court recited evidence as to arrests and charges having been filed, the court did not make explicit findings of specific prosecutions pending at the time of the commencement of the action or at the time of its decision. Since the facts of possible prosecutions pending now and at the commencement of the action are crucial to matters of mootness, standing, and the applicability of *Younger v. Harris*, we should remand to the District Court for further findings in this area.

Three of the statutes held to be unconstitutional by the District Court have been repealed by the Texas Legislature in a new codification of the Penal Code. Articles 439 (unlawful assembly), 474 (breach of the peace), and 482 (abusive language) can no longer be employed to arrest appellees or members of their class. On remand the District Court should first determine whether appellees had standing to commence this action respecting these three statutes. "It must be alleged that the plaintiff 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged statute or official conduct. *Massachusetts v. Mellon*, 262 U. S. 447, 488 (1923)." *O'Shea v. Littleton*, 414 U. S. 488, 494 (1974). Even if by the operation, i. e., arrest and prosecution, or threatened operation of the statutes, one or more appellees had standing to commence this action, the District Court will be obliged to resolve the "question as to the continuing existence of a live and acute controversy." *Steffel v. Thompson*, 415 U. S. 452, 459 (1974). (Emphasis in original.) See also *Indiana Employment Division v. Burney*, 409 U. S. 540 (1973). Since the statutes have

been repealed threats of future prosecution can no longer suffice to establish a live controversy. The injury that appellees faced and face must then result from pending prosecutions under each of the challenged statutes now repealed.

The two other statutes held unconstitutional by the District Court, Tex. Rev. Civ. Stat., Arts. 5154d and 5154f, have not been repealed, and I cannot say, on this record, that the possibility of future prosecutions is or is not real. The District Court should examine the standing of appellees to challenge the constitutionality of these statutes under the same guidelines as applicable to the three repealed statutes, except that prosecution remains hypothetically possible under these two statutes. See *Steffel v. Thompson*, *supra*, at 459.

We have recently held in *O'Shea v. Littleton*, *supra*, at 493, that standing must be personal to and satisfied by "those who seek to invoke the power of federal courts." See also *Bailey v. Patterson*, 369 U. S. 31, 32-33 (1962); *Long v. District of Columbia*, 152 U. S. App. D. C. 187, 190, 469 F. 2d 927, 930 (1972). If an individual named appellee was and is subject to prosecution under one of the challenged statutes, that appellee would have standing to challenge the constitutionality of that statute. If an individual named appellee was and is threatened with prosecution under one of the extant statutes, that appellee would have standing to challenge its constitutionality. Prosecutions instituted against persons who are not named plaintiffs cannot form the basis for standing of those who bring an action. In particular, a named plaintiff cannot acquire standing to sue by bringing his action on behalf of others who suffered injury which would have afforded them standing had they been named plaintiffs; it bears repeating that a person cannot predicate standing on injury which he

does not share. Standing cannot be acquired through the back door of a class action. *O'Shea v. Littleton*, *supra*; *Bailey v. Patterson*, *supra*, at 32-33.⁴

In addition to any individual named appellees the Union itself may have standing to challenge the constitutionality of the statutes. The Court has long recognized that the First Amendment's guarantees of free speech and assembly have an important role to play in labor disputes. *Thornhill v. Alabama*, 310 U. S. 88, 102 (1940); *Thomas v. Collins*, 323 U. S. 516, 532 (1945). I agree with the Court that unions, as entities, in addition to union members and organizers, are entitled to the benefit of those guarantees and that a union may sue under 42 U. S. C. § 1983 to enforce its First Amendment rights.

Here the appellee Union alleged in the complaint that it was deprived of its constitutional rights of free speech and assembly by the actions of defendants in enforcing the challenged Texas statutes. If, as claimed by the Union, union members were subject to unlawful arrest and threats of arrest in their First Amendment protected organizational activity on behalf of the Union, the Union would have derivatively suffered or have been in the position to suffer derivatively real injury and would have standing to complain of that injury and bring this action.⁵ If a person who was a member of the Union both at the time of that person's arrest and at the present time

⁴ The Court states that "the District Court must find that the class was properly represented." *Ante*, at 819 n. 13. I take this to mean that the named plaintiff must be an appropriate representative for the class; the named plaintiff must have suffered the same injury as the class purportedly represented, and that injury must be sufficient to accord the named plaintiff standing to sue in his own right. *Bailey v. Patterson*, 369 U. S. 31, 32-33 (1962); *Long v. District of Columbia*, 152 U. S. App. D. C. 187, 190, 469 F. 2d 927, 930 (1972).

⁵ See *Sierra Club v. Morton*, 405 U. S. 727, 739 (1972); *NAACP v. Button*, 371 U. S. 415, 428 (1963).

would have standing individually to challenge the constitutionality of one of the five statutes, then the Union itself would have such standing, since the inability of the union member to communicate freely restricts the ability of the Union to communicate. As the Court states, *ante*, at 819 n. 13, a union "can act only through its members."⁶

III

(A)

The District Court on remand will be faced with the issue of the applicability of *Younger v. Harris*, 401 U. S. 37 (1971), to appellees. Since standing and the continued existence of a live controversy as to the action in relation to the three repealed statutes depends on the pendency of prosecutions under each of the statutes, it will be necessary for appellees to meet *Younger* standards to reach the constitutional merits of any of these statutes.

To the extent that they can prove standing, the individual appellees will be seeking federal court interference in their own state court prosecutions. The Union, to the extent that it has standing, will be seeking interference with state court prosecutions of its members. There is an identity of interest between the Union and its prosecuted members; the Union may seek relief only because of the prosecutions of its members,⁷ and

⁶ The Union may, of course, be directly subject to criminal prosecution. A union prosecuted or threatened with prosecution *qua* union would be in the same position as an individual litigant with regard to standing and *Younger v. Harris*, 401 U. S. 37 (1971). The special rules outlined in this opinion are designed for the more common situation where the union is not injured by being proceeded against directly in the operation of the criminal laws, but, rather, is injured derivatively from prosecutions and threats of prosecutions of its members.

⁷ See n. 6, *supra*.

only by insuring that such prosecutions cease may the Union vindicate the constitutional interests which it claims are violated. The Union stands in the place of its prosecuted members even as it asserts its own constitutional rights. The same comity considerations apply whether the action is brought in the name of the individually arrested union member or in the name of the Union, and there is no inequity in requiring the Union to abide by the same legal standards as its members in suing in federal court. If the Union were unable to meet the requirements of *Younger*, its members subject to prosecution would have a full opportunity to vindicate the First Amendment rights of both the Union and its members in the state court proceedings. Any other result would allow the easy circumvention of *Younger* by individuals who could assert their claims of First Amendment violations through an unincorporated association of those same individuals if the association is immune from *Younger* burdens.

This result is not contrary to that reached in *Steffel v. Thompson*, 415 U. S. 452 (1974), where the arrest of one demonstrator was not imputed for *Younger* purposes to petitioner who brought suit for declaratory relief against the application of the state statute under which the other demonstrator was arrested and petitioner was only threatened with arrest. There was no indication in that case that petitioner and the arrestee were associated otherwise than in the distribution of antiwar handbills. Furthermore, in *Steffel*, the petitioner departed to avoid arrest while his companion in handbilling stayed. The joint activity of petitioner and his companion in *Steffel* ceased prior to the arrest of the companion. Finally, there is no indication that the arrestee would seek to or be able to vindicate petitioner's rights in the criminal proceeding, and on such a factual showing it would be unfair to re-

quire petitioner to await the outcome of state court proceedings he was not a party to and had no apparent connection with. No such unfairness inheres in this situation where the Union might be required to await state criminal trials of its members to vindicate rights it holds in common with those members and was deprived of derivatively only through prosecutions directed at those members.⁸

The process of determining when *Younger* applies becomes more complex when dealing with the two extant statutes. If there are state court prosecutions against the individual appellees or the Union under these statutes then *Younger* requirements must be met. If there are prosecutions against members of the Union under these statutes (and the Union asserts standing derivatively) then the *Younger* hurdle must be met for the reasons stated. If standing of individual appellees or the Union to challenge one of the statutes is based *solely* on threatened prosecutions, and the relief pursued below with respect to that statute is declaratory only, then *Younger* does not apply. *Steffel v. Thompson, supra*. If appellees seek injunctive relief with respect to the operation or enforcement of a statute for the violation of which prosecutions are threatened, the question of whether *Younger* applies has not been answered by this Court. *Steffel v. Thompson, supra*, at 463. Since the issue may well not arise on remand it would be premature now to attempt to resolve it. The development of what relief was and still is requested by appellees is a matter

⁸ There is no need now to attempt to further define those situations in which it would be proper to impute the state criminal prosecution of one who is not a federal plaintiff to one who is. The association of the state criminal defendant and the federal plaintiff necessary for imputation will depend upon facts of joint activity and common interest.

best left to the District Court on remand.⁹ Finally, if the Union sues on the basis of injury to its members, then since, as to a statute challenged, one member must, if suing on his own behalf, meet the requirements of *Younger*, the Union must do so, even though other of its members would not be so burdened if they had brought suit individually. The requirements of *Younger* are not to be evaded by artificial niceties.

(B)

The next step in the analysis is to define the burdens imposed by *Younger v. Harris*. There we held that before a federal court can interfere with state criminal proceedings great and immediate irreparable injury must be shown "above and beyond that associated with the defense of a single prosecution brought in good faith." 401 U. S., at 48. The injury must include, except in extremely rare cases, "the usual prerequisites of bad faith and harassment." *Id.*, at 53. In *Younger* the Court made clear that the mere fact that the statute under which the federal court plaintiff is being proceeded against is unconstitutional on its face "does not in itself justify an injunction against good-faith attempts to

⁹ The relief open to the District Court on remand is limited by the repeal of three of the statutes. Since the statutes no longer exist, they can have no conceivable further "chilling effect" on others in the exercise of their constitutionally protected rights. The justification has disappeared, then, for permitting a litigant to challenge a statute, not because of the unconstitutional application of the statute as to his conduct, but rather because the statute *might* as to *other* persons be applied in an unconstitutional manner. By repealing the statutes, the State has "remove[d] the seeming threat or deterrence to constitutionally protected expression," and the District Court should not apply the "strong medicine" of the overbreadth doctrine, which "has been employed by the Court sparingly and only as a last resort" to hold statutes unconstitutional on their face. *Broadrick v. Oklahoma*, 413 U. S. 601, 613 (1973).

enforce it." *Id.*, at 54. The Court described as "important and necessary" the State's task of enforcing statutes which may have an incidental inhibiting effect on First Amendment rights, "against socially harmful conduct that the State believes in good faith to be punishable under its laws and the Constitution." *Id.*, at 52.

Younger principles not only mandate federal court abstention in the case of good faith enforcement of facially unconstitutional statutes, but also require that claims of unconstitutionality, other than facial invalidity, be presented, in the first instance, to the state court in which the criminal prosecution involving the claimed constitutional deprivation is pending. In *Perez v. Ledesma*, 401 U. S. 82 (1971), the United States District Court upheld the challenged Louisiana anti-obscenity statute as valid on its face¹⁰ but ruled that the arrests of the state court defendants-federal court plaintiffs and the seizure of the allegedly obscene materials were invalid because of a lack of a prior adversary hearing on the character of the materials. We held such interference to be improper:

"The propriety of arrests and the admissibility of evidence in state criminal prosecutions are ordinarily matters to be resolved by state tribunals, see *Stefanelli v. Minard*, 342 U. S. 117 (1951), subject, of course, to review by certiorari or appeal in this Court or, in a proper case, on federal habeas corpus. Here *Ledesma* was free to present his federal constitutional claims concerning arrest and seizure of materials or other matters to the Louisiana courts in the manner permitted in that State. Only in cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary

¹⁰ But see n. 18, *infra*.

circumstances where irreparable injury can be shown is federal injunctive relief against pending state prosecutions appropriate. . . . There is nothing in the record before us to suggest that Louisiana officials undertook these prosecutions other than in a good-faith attempt to enforce the State's criminal laws." *Id.*, at 84-85.

A state court is presumed to be capable of fulfilling its "sole responsibility . . . 'to guard, enforce, and protect every right granted or secured by the Constitution of the United States' *Robb v. Connolly*, 111 U. S. 624, 637 (1884)." *Steffel v. Thompson*, 415 U. S., at 460-461. Yet a state court cannot effectively fulfill its responsibility when the prosecutorial authorities take deliberate action, in bad faith, unfairly to deprive a person of a reasonable and adequate opportunity to make application in the state courts for vindication of his constitutional rights. When such an individual, deprived of meaningful access to the state courts, faces irreparable injury to constitutional rights of great and immediate magnitude, either in the immediate suit or in the substantial likelihood of "repeated prosecutions to which he will be subjected," *Younger v. Harris*, 401 U. S., at 49, and the injury demands prompt relief, federal courts are not prevented by considerations of comity from granting the extraordinary remedy of interference in pending state criminal prosecutions.

A breakdown of the state judicial system which would allow federal intervention was the allegation of appellants in *Dombrowski v. Pfister*, 380 U. S. 479 (1965). In that case appellants had offered to prove, *inter alia*, that the state prosecutor was holding public hearings at which were being used photostatic copies of illegally seized evidence, which evidence had already been ordered suppressed by a state court. It was alleged further that

the prosecutor was threatening to use other copies of the illegally seized documents before the grand jury to obtain indictments. If proved, the allegations in *Dombrowski* made out a clear case of a breakdown in the checks and balances in the state criminal justice system. The courts had lost control of a prosecutor embarked on an alleged campaign of harassment of appellants, designed to discourage the exercise of their constitutional rights. Under such circumstances federal intervention would be authorized.

To meet the *Younger* test the federal plaintiff must show manifest bad faith and injury that is great, immediate, and irreparable, constituting harassment of the plaintiff in the exercise of his constitutional rights, and resulting in a deprivation of meaningful access to the state courts. The federal plaintiff must prove both bad faith and requisite injury. In judging whether a prosecution has been commenced in bad faith, the federal court is entitled to take into consideration the full range of circumstances surrounding the prosecutions which the federal plaintiff would have the District Court interfere with. A federal court must be cautious, however, and recognize that our criminal justice system works only by according broad discretion to those charged to enforce laws. Cf. *Santobello v. New York*, 404 U. S. 257 (1971). In this regard, prosecutors will often, in good faith, choose not to prosecute or to discontinue prosecutions for entirely legitimate reasons. An individual, once arrested, does not have a "right" to proceed to trial in order to make constitutional claims respecting his arrest. Conversely, prosecutors may proceed to trial with less than an "open and shut" case against the defendants. In *Cameron v. Johnson*, 390 U. S. 611, 621 (1968), the Court noted:

"[T]he question for the District Court was not the

guilt or innocence of the persons charged; the question was whether the statute was enforced against them with no expectation of convictions but only to discourage exercise of protected rights. The mere possibility of erroneous application of the statute does not amount 'to the irreparable injury necessary to justify a disruption of orderly state proceedings.' *Dombrowski v. Pfister*, *supra*, at 485. The issue of guilt or innocence is for the state court at the criminal trial; the State was not required to prove appellants guilty in the federal proceeding to escape the finding that the State had no expectation of securing valid convictions." (Footnote omitted.)

One step removed from the decision of the prosecutor to prosecute is the decision of the policeman to arrest. The bad faith nature of a prosecution may sometimes be inferred from the common activity of the prosecutor and the police to employ arrests and prosecutions unlawfully to discourage the exercise of civil rights. The conclusion that the prosecutor and police are acting as one to deprive persons of their rights should not be inferred too readily on the basis of police action alone. Just as is the case with prosecutors, the police possess broad discretion in enforcing the criminal laws. Police cannot reasonably be expected to act upon a realization that a law that they are asked to enforce may be unconstitutional. Even when police cross the line of legality as they enforce statutes they may not be acting willfully; the precise contours of probable cause, like the Fourth Amendment's stricture against unreasonable search and seizure are far from clear. When a policeman willfully engages in patently illegal conduct in the course of an arrest there still should be clear and convincing proof, before bad faith can be found, that this was part of a common plan or scheme, in concert with the prosecutorial au-

thorities, to deprive plaintiffs of their constitutional rights. Willful, random acts of brutality by police, although abhorrent in themselves, and subject to civil remedies, will not form a basis for a finding of bad faith. The police may, of course, embark on a campaign of harassment of an individual or a group of persons without the knowledge or assistance of the prosecutorial authorities. The remedy in such a case would not lie in enjoining state prosecutions, which would provide no real relief, but in reaching down through the State's criminal justice system to deal directly with the abuses at the primary law enforcement level. Cf. *Lankford v. Gelston*, 364 F. 2d 197 (CA4 1966). See, *infra*.

Unless the injury confronting a state criminal defendant is great, immediate, and irreparable, and constitutes harassment, the prosecution cannot be interfered with under *Younger*. The severity of the standard reflects the extreme reluctance of federal courts to interfere with pending state criminal prosecutions.

If the federal court plaintiff seeks injunctive or declaratory relief based on claimed facial invalidity of a statute, the injury may derive not only from the prosecutions the plaintiff is currently facing where a violation of that statute is alleged, but also from the probability of future prosecutions under that statute. Evidence of multiple arrests and prosecutions of persons other than the federal plaintiff under that statute may well bear on the likelihood of future arrests and prosecutions of the federal plaintiff. A state criminal defendant seeking relief against more than one statute, must prove the requisite degree of injury separately for each statute he challenges. Any other rule would encourage insubstantial and multiple attacks on the constitutionality of state statutes by persons hoping to meet the strict standards of injury by accumulating effects under many

state provisions in order to reach the constitutional merits of only one or a few. Furthermore, the considerations of comity which underlie *Younger* would be ill served if a federal court were to employ a showing of bad faith and harassment respecting prosecutions brought under one facially challenged statute as a pretext for searching a State's statutory code for unconstitutional provisions to strike down. Cf. *Boyle v. Landry*, 401 U. S. 77, 81 (1971).

The same rule must, perforce, apply when the relief sought is limited in scope, by way of constitutional challenges to statutes as applied, to interference only with specific prosecutions. Since no relief is requested which could affect the future operation or enforcement of a statute (as would be the case when a statute is challenged on its face), the injury must derive solely from the imminence of the single prosecution. The possibility of future arrests, under color of any state statutes, is irrelevant to proof of injury from the challenged prosecution. It will be the rare case, indeed, where a single prosecution provides the quantum of harm that will justify interference. On the other hand, in the case of an attack on the facial constitutionality of a statute, the likely prospect of multiple prosecutions, brought also in bad faith and without hope of conviction, for the violation of the same statute which formed the basis for the pending prosecutions of the federal court plaintiff, might well constitute a sufficient showing of harm to justify a federal court's decision to reach the constitutionality of the statute.

A special problem in proof of *Younger* injury arises with the Union: shall the Union be permitted to aggregate the injuries which all its members will reasonably suffer under the operation of statutes, or must the injury test be satisfied independently by one person who was and is a member of the Union? For the reason ex-

pressed above as to why prosecutions of Union members should be attributed to the Union for *Younger* purposes—that any other rule would allow of easy and unfair circumvention of *Younger*—the necessary injury must be confronted by any single member.¹¹ If no single member faces *Younger* injury, then the Union, which operates through its members, cannot realistically be said to face such injury.

With these principles in mind it is appropriate to turn to the facts in the instant case. The District Court assumed that *Younger* was applicable, and held, on the basis of the facts that it found, that the requirements of *Younger* had been met. The District Court then proceeded to the constitutional merits of each of the challenged statutes. The District Court's *Younger* holding was in error.

There is no reason for deferring review of the District Court's legal conclusion that *Younger* was satisfied, although the Court would, apparently, allow appellees to have a second chance at proving this element of their case. Although the trial of this action took place in 1968, the District Court's decision had not been handed down by the time *Younger* was issued in 1971. In September 1971, the parties were requested by the District Court to file supplemental briefs on the impact of *Younger* on this cause. In their briefs, appellants argued that the federal court was required under *Younger* to abstain, while appellees argued that *Younger* did not apply to the instant case, and, alternatively, that if *Younger* did apply the test of *Younger*

¹¹ Proof that other union members have been subject to bad faith arrests and prosecutions under a statute may be relevant to a claim that a union member faces injury from a substantial likelihood of being arrested and prosecuted in bad faith in the future under color of the same statute. See *supra*, at 838.

had been met. Appellees did not request hearings to adduce further proof relating to *Younger* bad faith and harassment. There is, therefore, no basis for reopening the matter on remand, and taking up valuable judicial time relitigating an issue as to which both sides have had their day in court. Failure to decide now whether appellees have met the *Younger* requirements with respect to challenges to the five statutes whose validity remains in issue would cause needless delay in a lawsuit already far removed in time from the events which precipitated it. With respect to the three repealed statutes, if the action is not moot appellees will be met with a *Younger* burden they have been unable to satisfy. With respect to the two extant statutes, the action will be moot, appellees will have failed to satisfy *Younger*, or appellees will not have had to satisfy *Younger*, only having been threatened with prosecutions. In any case, resolution of the *Younger* issues in this case at this time by the Court will expedite proceedings on remand and remove from this suit controverted matters ripe for judicial determination.

Appellees can, of course, seek to amend their amended complaint to make further allegations of fact regarding the events which took place during the one-year strike, and the District Court will then have to judge whether after nearly seven years "justice so requires" the amendment. Fed. Rule Civ. Proc. 15 (a).

The findings of fact by the District Court do not justify the legal conclusion that any of the appellees were in danger of suffering harm that was great, immediate, and irreparable, and constituted harassment, with respect to any one of the statutes. Such a showing must be made by each appellee separately regarding each statute. I now turn to an analysis of the facts, first on

the injury-harassment issue, and then to determine whether there was bad faith.

The only persons found to have been arrested for violating Tex. Penal Code, Art. 439 (unlawful assembly), were the two leaders of the January 26, 1967, prayer vigil. For five months thereafter no arrests took place under this statute. At the end of May 1967, 14 other persons¹² were arrested for trespassing, and later charged with unlawful assembly. These latter charges were pending only for three days before being dropped and replaced with charges of secondary picketing and boycotting. The evidence relating to Art. 439 is clearly insufficient to sustain any inference that any appellee, including the Union, faced the prospect of repeated arrests in the future under this statute. There is no showing that having to defend the state criminal actions instituted as a result of the arrests that were made under the statute would be in any manner unusually onerous and seriously damaging to any of the arrestees. They were traditional arrests with traditional burdens of defending against charges.

On two occasions arrests were made for violating Tex. Penal Code, Art. 474 (breach of the peace): of Raymond Chandler on October 12, 1966, and of nine persons (not apparently including Mr. Chandler¹³) on February 1, 1967. From February to June 1967, no arrests were made and no charges were filed for violations of this provision. No inference can be made that any person faces the likelihood of repeated and unwarranted arrests under this statute. There is nothing in the findings to suggest and no reason to believe that the few prosecutions resulting from enforcement of this statute will

¹² See ¶ 7.20 of the amended complaint, and 347 F. Supp. 605, 615 (SD Tex. 1972).

¹³ See ¶ 7.13 of the amended complaint, and 347 F. Supp., at 614.

result in any extraordinary hardship differing from those ordinarily associated with the usual defense of a criminal action.

It appears that five members of the Union were arrested for violating Tex. Penal Code, Art. 482 (abusive language) on January 26, 1967, about midway through the strike.¹⁴ The absence of *Younger* injury is even clearer in the challenge to this statute.

Another example of a single instance of enforcement of a statute is the arrest of 13 persons, on one occasion, May 31, 1967, for violating Tex. Rev. Civ. Stat., Art. 5154d (mass picketing). The facts are totally insufficient for a finding of the serious injury required under *Younger*.

Fourteen persons who were arrested for trespassing on May 26, 1967, were later charged with unlawful assembly, but those charges were pending only for three days, at the end of which time the 14 were charged with violating Tex. Rev. Civ. Stat., Art. 5154f, the secondary picketing and boycott provision. The only other time persons were charged with violating Art. 5154f was on November 9, 1966, when a complaint was filed against 10 persons for illegal picketing on November 3, 1966. The District Court does not challenge the grounds for issuing the complaint, but questions only the manner of the custody following the arrest of one of the 10, but that objectionable action had nothing whatever to do with the offense for which the individual was arrested. As with the four other statutes found unconstitutional, the test of serious injury under *Younger* is not met by such an inadequate showing of future harm.

Appellees also failed to prove that any prosecutions which might have resulted from these arrests were brought in bad faith. Very nearly all the evidence of

¹⁴ See ¶ 7.11 of the amended complaint, and 347 F. Supp., at 613.

bad faith found by the District Court relates to activities of the Texas Rangers and the Starr County Sheriff's Office, not of the prosecutors. Evidence bearing on the allegations of prosecutorial bad faith is restricted to three items: first, the District Court is mildly critical of an investigation, apparently inadequate, made by the County Attorney of Starr County into the shoving incident of May 11, 1967, and the subsequent decision not to go forward with the complaint which had been filed by the two men who had been shoved; second, a prosecutor conceivably could have had something to do with the excessively high bond set after Raymond Chandler's arrest on October 12, 1966, but there is no finding on this point; third, those arrested on February 1, 1967, for disturbing the peace were informed by the Justice of the Peace, on instructions from the County Attorney, that if they ever appeared in that court again under the same charge they would have to post bond.¹⁵ The record does not contain a finding that prosecutions were brought and then promptly dropped; in one instance persons arrested for violating an unchallenged statute on May 26, 1967, were later charged first with violating Tex. Penal Code, Art. 439, a challenged statute, and subsequently with violating Tex. Rev. Civ. Stat., Art. 5154f, also a challenged statute.

Nor can the isolated instances of police misconduct by Texas Rangers and Starr County Sheriff's deputies found by the District Court turn a series of prosecutions, apparently instituted in good faith (even assuming that all persons who were arrested are or were facing prosecutions as a result of their arrests), into a campaign of terror against the Union which could only be remedied

¹⁵ I can find nothing improper with this warning. A second offense under the same statute is usually looked on more seriously than a first.

by recourse to the federal courts. Excluding the distribution of the antiunion newspaper, which activity could hardly be said to have a direct and immediate disruptive effect on daily picketing and other organizational efforts of the Union, the District Court found only 12 days during this long controversy in which law enforcement or judicial officers of Texas acted in an improper fashion in dealing with strikers or strike sympathizers; this is an average of one per month. One of the "abuses" found by the District Court was the shoving of two persons. On another occasion, May 26, 1967, a camera was confiscated, two men were held near a passing train, and four persons were "roughly handled," 347 F. Supp., at 615, after their arrest by the Texas Rangers. All that happened on May 11, 1967, was that Captain Allee¹⁶ of the Texas Rangers told picketing strikers that he could get them all jobs at the Union-demanded wage. "[P]icketing occurred every day," of the strike with the exception of Sundays, *id.*, at 612, yet no allegedly harassing action was taken against the strikers from June 8, 1966, to October 12, 1966, a period of over four months, or from February 1, 1967, to May 11, 1967, a period of over three months. Finally, it is not surprising that the Texas Rangers and Sheriff's deputies would have found occasions to enforce laws governing picketing, assembly, and the peace of the community, against persons who sought to attain their goals by picketing, assembling, and otherwise seeking to make themselves and their cause heard in Starr County. Judging by the infrequency of occasions of enforcement of such laws the strike did not

¹⁶ Captain Allee is, apparently, no longer in active service having retired from the Texas Rangers. According to appellees he is no longer a member of the Texas Department of Public Safety. Defendants' Supplemental District Court Brief 6 (filed Oct. 26, 1971). If appellees no longer have an active controversy with Captain Allee the suit should be dismissed as moot as to him.

become an object of obsessive interest with the law enforcement personnel in Starr County.

In sum, the findings cannot be read as showing either bad faith or the requisite injury with respect to the operation and enforcement of any of the five challenged statutes. Appellees have totally failed to satisfy the demands of *Younger v. Harris*, 401 U. S. 37 (1971).

IV

The District Court not only declared five Texas statutes unconstitutional and enjoined their enforcement, but also issued an injunction against what I shall term "police misconduct." The injunction against police misconduct is issued on behalf of the named plaintiffs and the class they represent,

"to-wit, the members of Plaintiff United Farm Workers Organizing Committee, AFL-CIO, and all other persons who because of their sympathy for or voluntary support of the aims of said Plaintiff union have engaged in, are engaging in, or may hereafter engage in peaceful picketing, peaceful assembly, or other organizational activities of or in support of said Plaintiff union or who may engage in concert of action with one or more of Plaintiffs for the solicitation of agricultural workers or others to join or make common cause with them in matters pertaining to the work and labor of agricultural workers."

The injunction itself appears as paragraph 16 of the District Court's Final Judgment. This remarkable injunction reads in full as follows:

"16. It is further ordered, adjudged and decreed by the Court that Defendants, their successors, agents and employees, and persons acting in concert with them, are permanently enjoined and restrained

from any of the following acts or conduct directed toward or applied to Plaintiffs and the persons they represent, to-wit:

"A. Using in any manner Defendants' authority as peace officers for the purpose of preventing or discouraging peaceful organizational activities without adequate cause.

"B. Interfering by stopping, dispersing, arresting, or imprisoning any person, or by any other means, with picketing, assembling, solicitation, or organizational effort without adequate cause.

"C. Arresting any person without warrant or without probable cause which probable cause is accompanied by intention to present appropriate written complaint to a court of competent jurisdiction.

"D. Stopping, dispersing, arresting or imprisoning any person without adequate cause because of the arrest of some other person.

"E. As used in this Paragraph 16, Subparagraphs A, B and D above, the term 'adequate cause' shall mean (1) actual obstruction of a public or private passway, road, street, or entrance which actually causes unreasonable interference with ingress, egress, or flow of traffic; or (2) force or violence, or the threat of force or violence, actually committed by any person by his own conduct or by actually aiding, abetting, or participating in such conduct by another person; or (3) probable cause which may cause a Defendant to believe in good faith that one or more particular persons did violate a criminal law of the State of Texas other than those specific laws herein declared unconstitutional, or a municipal ordinance."

This Court lacks jurisdiction to review this injunction on direct appeal from the District Court; but assuming

this Court has jurisdiction over this portion of the final judgment, it should be remanded to the District Court along with the remainder of its judgment. For my part, if I were to rule on the merits of the injunction against police misconduct I would reverse.

(A)

The Court does not have jurisdiction on appeal over paragraph 16 of the final judgment. The proper course is to vacate and remand this portion of the District Court judgment for entry of a fresh judgment from which timely appeal can be taken to the Court of Appeals for the Fifth Circuit. See *Edelman v. Townsend*, 412 U. S. 914, 915 (1973).

This Court may hear on appeal

“an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.” 28 U. S. C. § 1253.

Congress has provided, by 28 U. S. C. § 2281 that no interlocutory or permanent injunction against the enforcement, operation or execution of a state statute may be granted on the ground of unconstitutionality unless the application for the injunction is heard and determined by a three-judge district court.

“This Court has more than once stated that its jurisdiction under the Three-Judge Court Act is to be narrowly construed since ‘any loose construction of the requirements of [the Act] would defeat the purposes of Congress . . . to keep within narrow confines our appellate docket.’ *Phillips v. United States* [312 U. S. 246,] 250.” *Goldstein v. Cox*, 396 U. S. 471, 478 (1970). In consonance with that philosophy in *Public Service Comm’n v. Brashear Lines*, 312 U. S. 621 (1941),

the Court, in a unanimous opinion written by Mr. Justice Black, held that following the denial by a three-judge district court of the application for an injunction against an allegedly unconstitutional state statute, a single district judge should have heard the motion to assess damages arising out of the temporary restraining order granted by a single district judge pending the hearing by the three-judge court on the injunction application.

"The limited statutory duties of the specially constituted three judge District Court had been fully performed before the motion for assessment of damages was filed. For § 266 of the Judicial Code provides for a hearing by three judges, instead of one district judge, only in connection with adjudication of a very narrow type of controversy—applications for temporary and permanent injunctions restraining state officials from enforcing state laws or orders made pursuant thereto upon the ground that the state statutes are repugnant to the Federal Constitution. The motion for damages raised questions not within the statutory purpose for which the two additional judges had been called. Those questions were therefore for the consideration of the District Court in the exercise of its ordinary jurisdiction, and the three judge requirement of § 266 had no application." *Id.*, at 625 (footnotes omitted).

The Court was careful to state that a three-judge court "has jurisdiction to determine every question involved in the litigation pertaining to the prayer for an injunction, in order that a single lawsuit may afford final and authoritative decision of the controversy between the parties." *Id.*, at 625 n. 5.

We reaffirmed our *Brashear* holding in *Perez v. Ledesma*, 401 U. S. 82 (1971). In *Perez* the appellees were charged in informations filed in state court with vio-

lations of a Louisiana statute and a local parish ordinance. The three-judge Federal District Court "held" the state statute to be facially constitutional,¹⁷ but ruled that arrests and seizures of materials were invalid and entered a suppression order and required the return of the seized materials to the appellees. The District Court also expressed its view that the parish ordinance was invalid. The District Judge who initially referred the action to the three-judge court adopted that court's view and declared the ordinance invalid. We refused to review the decision concerning the local ordinance, stating:

"Even if an order granting a declaratory judgment against the ordinance had been entered by the three-judge court below (which it had not), that court would have been acting in the capacity of a single-judge court. We held in *Moody v. Flowers*, 387 U. S. 97 (1967), that a three-judge court was not properly convened to consider the constitutionality of a statute of only local application, similar to a local ordinance. Under 28 U. S. C. § 1253 we have jurisdiction to consider on direct appeal only those civil actions 'required . . . to be heard and determined' by a three-judge court. Since the constitutionality of this parish ordinance was not 'required . . . to be heard and determined' by a three-judge panel, there is no jurisdiction in this Court to review that question.

"The fact that a three-judge court was properly convened in this case to consider the injunctive relief requested against the enforcement of the state statute, does not give this Court jurisdiction on direct appeal over other controversies where there is no independent jurisdictional base. Even where

¹⁷ See n. 18, *infra*.

a three-judge court is properly convened to consider one controversy between two parties, the parties are not necessarily entitled to a three-judge court and a direct appeal on other controversies that may exist between them. See *Public Service Comm'n v. Brashear Freight Lines*, 306 U. S. 204 (1939).¹⁸ *Id.*, at 86-87. (Footnote omitted.)

Brashear Lines and *Perez* are authority for the proposition that a three-judge district court convened under

¹⁸ The Court would rely on *Milky Way v. Leary*, 397 U. S. 98 (1970), for the contrary proposition: that this Court has jurisdiction to review by way of direct appeal ancillary matters decided by a three-judge district court in the exercise of its primary three-judge court review of the constitutional validity of state statutes. The precedential value of our summary affirmance in this case is somewhat diminished by the fact that the *Brashear* problem was not raised in any of appellees' briefs. In fact, one of the appellees, contrary to *Brashear*, appears to concede that this Court possesses jurisdiction to review ancillary matters decided by a properly convened three-judge court. Motion to Dismiss or Affirm of Appellee Frank S. Hogan 9 (No. 992, O. T. 1969). It should be noted, further, that *Perez v. Ledesma*, 401 U. S. 82 (1971), which included a full analysis of ancillary jurisdiction on direct appeal from a three-judge court, was decided after *Milky Way* was summarily affirmed.

Although the District Court in *Perez* stated that it held the state statute to be facially constitutional, the decision of the District Court there that the arrests and seizures were unconstitutional appears in fact to have derived from a broad condemnation of obscenity statutes, including the state statute dealt with in that case, without provisions incorporated therein protecting against criminal liability for acts occurring prior to an adversary judicial determination of obscenity. 304 F. Supp. 662, 667 (ED La. 1969). In effect, then, the District Court in *Perez* acted broadly to render a nullity the Louisiana statute, see *id.*, at 673 (Rubin, J., dissenting), and we, therefore, properly had jurisdiction over the appeal and we properly ruled on the question of whether the District Court could have interfered with state court criminal proceedings by invalidating arrests and seizures made without any prior adversary hearing.

§ 2281 must restrict itself narrowly to the adjudication of those matters which bear directly on the grant or denial of injunctive relief against state statutes. So long as the constitutional claim is not insubstantial the three-judge court may consider nonconstitutional claims urged alternatively in support of the injunctive relief, and we have jurisdiction to review such nonconstitutional portions of the district court's decision. *Florida Lime Growers v. Jacobsen*, 362 U. S. 73 (1960).¹⁹ Indeed, a three-judge district court would be required to give priority to consideration of a statutory claim over a constitutional claim. *Rosado v. Wyman*, 397 U. S. 397, 402 (1970). However, in ruling on nonconstitutional challenges to the operation of state statutes, the district court remains concerned with the same form of relief—injunctive—directed at the same state statutes, as it would if it were ruling on the constitutional claim, and is not, therefore, involved in solving any “other controversy” between the parties. *Perez, supra*. Similarly, the only noninjunctive relief regularly granted by three-judge district courts is a declaratory judgment of unconstitutionality. Not only is a finding of unconstitutionality a necessary concomitant to the enjoining of the operation and enforcement of a state statute on constitutional grounds, but a declaration of unconstitutionality does not reach in its effect beyond the same state statutes which are subject to the injunction.

¹⁹ The Court in *Jacobsen* reasoned that

“[t]o hold to the contrary would be to permit one federal district judge to enjoin enforcement of a state statute on the ground of federal unconstitutionality whenever a non-constitutional ground of attack was also alleged, and this might well defeat the purpose of § 2281.” 362 U. S., at 80. (Emphasis in original.)

To hold that a three-judge district court is not required to hear matters unrelated to the determination of whether to enjoin the enforcement of state statutes, would pose no similar risk.

A three-judge district court should not venture beyond these two narrow and necessary exceptions to the general rule that a three-judge court is not required to hear any matters beyond the constitutional challenge to the statute which led to its convening. For example, a three-judge court should not retain jurisdiction to assess damages, *Brashear Lines, supra*, or to insure enforcement of a decree which it entered adjudging the statute unconstitutional. Cf. *Hamilton v. Nakai*, 453 F. 2d 152, 160-161 (CA9 1971), cert. denied, 406 U. S. 945 (1972).

Any other rule would

"encumber the district court, at a time when district court calendars are overburdened, by consuming the time of three federal judges in a matter that was not required to be determined by a three-judge court." *Rosado v. Wyman, supra*, at 403.

And any other rule would burden this Court through the unnecessary expansion of our jurisdiction on direct appeal. The District Court's broad injunction against police misconduct in this case without even a semblance of reasoned analysis provides a compelling example of the need for a review by an intermediate appellate tribunal to sort out the facts and issues necessary for review here, should that occur. This case presents a glaring example of an undue burden placed on this Court: to wrestle with difficult legal issues on the basis of a record inadequately digested and analyzed by the District Court and untouched by the scrutiny of a court of appeals. From its findings of fact the District Court has drawn almost impressionistic conclusions regarding the scope and impact of the perceived abuses of the Texas law enforcement authorities. It is as if the District Court viewed the conduct of the police and prosecutors as directed against one individual, rather than many, over a brief period of time, rather than a year. This

is an instance where the remoteness of intervening appellate review would have provided a salutary perspective on the factually complex and impassioned debate waged in the trial court.

Even if the general rule were other than that no ancillary relief in aid of injunctive relief should issue from a three-judge court, the injunction against police misconduct in this case could not be considered to be ancillary to the primary relief so as to confer jurisdiction upon this Court on direct appeal. Enjoining enforcement of *state statutes* is a far different enterprise from enjoining *specific police misconduct*; a separate review of the first by this Court and the second by a court of appeals would not result in a fragmented appeal. In the application of the *Younger v. Harris*, 401 U. S. 37 (1971), test of "bad faith and harrassment" a court would look to certain specific types of police and prosecutorial misconduct as a predicate for reaching the merits of the constitutional attack against state statutes for the violation of which persons are being subject to prosecution. A finding of police harassment necessary for the issuance of an injunction against police misconduct is not quasi-jurisdictional as with *Younger*, but is a determination on the merits. Under *Younger* a court is concerned principally with police and prosecutorial misconduct which denies to a person subject to the state laws a fair opportunity to have his challenges to those laws heard by the state courts, whereas, in weighing whether to issue an injunction against police misconduct, a court would likely be concerned solely with police misconduct which itself denies persons their constitutional rights. While there may be some overlap of facts possibly relevant to the quasi-jurisdictional *Younger v. Harris* determination and to the merits of whether to grant an injunction against police misconduct, there would be no identity of

proof, the legal standards to apply to the facts would not be the same, and the nature and object of each determination would be different.

Thus, an injunction against *police misconduct* would not be so related to injunctive relief against the operation of *unconstitutional state statutes* as to require a three-judge district court, even if *Brashear* and *Perez* did not apply to foreclose our consideration of paragraph 16 of the District Court's judgment. Upon the issuance of the declaratory and injunctive relief against the five Texas statutes the three-judge District Court should have dissolved itself and referred the case to the single District Judge to whom the case was originally assigned for whatever further proceedings were necessary.

(B)

Assuming, *arguendo*, that this Court has jurisdiction to review the injunction against police misconduct, the proper course would be to vacate and remand that portion of the District Court's judgment.

The injunction against police misconduct was entered by the District Court without benefit of independent analysis in the District Court findings or opinion. The penultimate paragraph in the opinion of the District Court is the sole discussion provided regarding the injunction that was later entered:

"In addition, plaintiffs are also entitled to a permanent injunction restraining the defendants not only from any future acts enforcing the statutes here declared void, but also restraining them from any future interference with the civil rights of plaintiffs and the class they represent. *Hairston v. Hutzler*, 334 F. Supp. 251 (W. D. Pa. 1971)." 347 F. Supp., at 634.

The District Court's catch-all discussion of the facts appears to have been made solely with a view of overcoming the *Younger* barrier to adjudication of appellees' claims and not to establish any legal rationale for the injunction against police misconduct. The injunction's crucial term "adequate cause" is defined, in part, by reference to the declarations of unconstitutionality of the five Texas statutes. Evidently, the District Court's purpose in including this further injunctive relief against police misconduct in its judgment was to protect the integrity and aid in the enforcement of the primary declaratory and injunctive relief ordered by the Court. If the Court now remands to the District Court that part of the judgment which encompasses the primary relief, it would seem logical to also send back for reconsideration the relief which the District Court apparently premised on the existence of the primary relief. Since it is possible that following the remand the District Court will conclude that no relief directed against the operation or enforcement of the challenged statutes should be entered, the District Court should have the opportunity to consider whether the injunction against police misconduct would any longer be appropriate.

(C)

Finally, I am satisfied the District Court abused its discretion when it granted this injunction against police misconduct.

The injunction as entered would allow review by the federal court, by way of contempt proceedings, of claims which would, at the same time, be *sub judice* in ongoing state criminal proceedings. For example, assume a deputy sheriff made an arrest without a warrant and incident to that arrest seized evidence relevant to proof of a criminal offense. The arrestee can seek to suppress

the evidence in his state criminal trial on the ground that the arrest which preceded the seizure was not based upon probable cause. The injunction against police misconduct would permit a trial of the same claim in federal court. Final Judgment, par. 16 (C). *Perez v. Ledesma*, 401 U. S. 82 (1971), and *Samuels v. Mackell*, 401 U. S. 66 (1971), would require a *Younger* showing before any contempt citation could issue in such a situation. An injunction which contemplates this type of interference in state criminal proceedings is invalid on its face. "A federal court should not intervene to establish the basis for future intervention that would be so intrusive and unworkable." *O'Shea v. Littleton*, 414 U. S., at 500. Although *O'Shea* dealt with the propriety of an injunction which would purport to punish as contempt actions of judicial officers taken during the course of state criminal proceedings, the potential for disruption of state criminal proceedings, which was a principal concern in our analysis in *O'Shea*, is just as real a possibility in the case of the District Court's injunction against police misconduct. However accomplished

"such a major continuing intrusion of the equitable power of the federal courts into the daily conduct of state criminal proceedings is in sharp conflict with the principles of equitable restraint which this Court has recognized" *Id.*, at 502.

The injunction, in its subparagraph (B), appears to leave no room for temporary restraint for investigation of suspicious activities premised on less than probable cause which this Court has held to be constitutional. *Terry v. Ohio*, 392 U. S. 1 (1968).

The problems created by this injunction against police misconduct are manifold. In the enforcement of the in-

junction, the District Court will likely place itself on a collision course with our holdings in *Younger* and *O'Shea*. The fact that the law enforcement officers in Starr County and, indeed, in the whole State of Texas will be compelled to enforce the law only under threat of criminal contempt proceedings in the United States District Court of the Southern District of Texas, illustrates the reckless course of action embarked upon by the District Court in issuing this injunction. Federal district courts were not meant to be super-police chiefs, disciplining individual law enforcement officers for infractions of the rules for arrests and searches and seizures. A district court which improperly intrudes upon local police functions "can undermine the important values of police self-restraint and self-respect." *Long v. District of Columbia*, 152 U. S. App. D. C. 187, 194, 469 F. 2d 927, 934 (1972) (Wright, J., concurring).

For all the problems that this injunction is likely to create, I find no reason to believe that it will provide meaningful relief for appellees. Comment, *The Federal Injunction as a Remedy for Unconstitutional Police Conduct*, 78 Yale L. J. 143 (1968).²⁰

²⁰ The author of the Comment wrote:

"For tolerated constitutional violations, a prohibitory injunction which only ordered high police officials to refrain from unconstitutional conduct would be useless—the problem lies not in what such officials are doing but in what they are *not* doing. Purely prohibitory injunctions would have to be directed against the subordinate policemen who were acting illegally. But courts would be unable to enforce such injunctions unless they were willing to take over the task of disciplining individual policemen. Such an approach would be highly inefficient since the court's only means of enforcing its orders directly against policemen—a contempt proceeding—would be far too cumbersome and heavy-handed to deal effectively with large numbers of alleged violations.

"If the injunction is to have any utility as a remedy for tolerated police abuse, it must require affirmative action by the officials

The District Court, here, has entered an injunction which is ineffective in providing relief to appellees and likely to provoke extreme resentment among those the injunction restrains²¹ and genuine concern among all those who still adhere to the proposition that state and federal relations should be governed by notions of comity.

In any event, I believe that the facts which were found by the District Court²² do not support the granting of a prohibitory or mandatory injunction against police conduct.

"[R]ecognition of the need for a proper balance in the concurrent operation of federal and state courts counsels restraint against the issuance of injunctions against state officers engaged in the administration of the State's criminal laws in the absence of a showing of irreparable injury which is "both great and immediate." [Younger v. Harris, 401 U. S. 37, 46 (1971).] O'Shea v. Littleton, 414 U. S., at 499.

Injunctions against police conduct should be issued, if at all, in only the most extreme cases, see, e. g., *Lankford v. Gelston*, 364 F. 2d 197 (CA4 1966), and then only to the extent that the relief granted would not "unnecessarily involve the courts in police matters and dictate action in situations in which discretion and flex-

responsible for police conduct." *Id.*, at 147. (Emphasis in original; footnote omitted.)

²¹ The injunction may run against all the judicial officers in Texas. A Justice of the Peace is a named defendant. The injunction enjoins "Defendants, their successors, agents and employees, and persons acting in concert with them." *O'Shea v. Littleton*, 414 U. S. 488 (1974), would seem plainly to forbid anticipatory interference by an injunction in the official activities of state judicial officers.

²² See Parts I and III, *supra*.

ibility are most important. In order for a court to grant an injunction, there should be a showing that there is a substantial risk that future violations will occur." *Long v. District of Columbia, supra*, at 192, 469 F. 2d, at 932. The acts of police misconduct were few and scattered. There was no basis for the issuance of an injunction against police misconduct.

